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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1962~~ 1963

No. ~~606~~ 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. ~~609~~ 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITIONS FOR CERTIORARI FILED NOVEMBER 21, 1962
CERTIORARI GRANTED JANUARY 7, 1963

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155—The Alabama Journal issue of February 23, 1961, article "4 Negroes File Suit"	1669	2231
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157—The Alabama Journal issue of November 2, 1960, article "L. B. Sullivan Testifies In Times Suit" By Judith Rushin, Journal Staff Writer	1673	2234
158—The Alabama Journal issue of November 4, 1960, article "Must Stick To The Truth"	1679	2240
159—Clerk's note re: One Roll of Film taken in the Courtroom during the progress of the trial and which was later shown over television station W.C.O.V. in Montgomery, Ala.	1681	2242
160—Montgomery, Alabama Television Station, W.C.O.V., Television Script of November 3, 1960 giving information about the trial	1681	2242
Reporter's and clerks' certificates to exhibits (omitted in printing)	1682a	2243

In Circuit Court of Montgomery County, Alabama

Plaintiff's Exhibit No. 311

In the Supreme Court of Alabama, Third Division

No. .....

Ex Parte, The New York Times Company,
A Corporation, Petitioner,

vs.

Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent.

Petition for the Writ of Mandamus

To the Honorable Justices of the Supreme Court of Alabama:

Comes the New York Times Company, a corporation, and without submitting itself to the jurisdiction of the Circuit Court of Montgomery County, Alabama, and without waiving in any wise its limited appearances therein objecting to the jurisdiction thereof by the filing of this Petition in the Honorable Supreme Court of Alabama, and filing this Petition specifically for the purpose of reviewing an order or ruling of the said Circuit Court heretofore made in connection with the issues in said Court presented by this defendant's objection to the jurisdiction thereof, respectfully shows unto the Court the following facts:

[fol. 1252] 1. That The New York Times Company, a corporation, is a corporation organized under the laws of the State of New York and is a non-resident of the State of Alabama, not qualified to do nor doing business in the said State of Alabama, and has been made a party defendant to a certain cause of action now pending in the Circuit Court of Montgomery County, Alabama, wherein said defendant has appeared specially and solely for the purpose of mov-

ing to quash service of process upon it in said cause and for no other purpose, and in which cause one L. B. Sullivan is the plaintiff and being Case No. 27416 in said Circuit Court of Montgomery County, Alabama.

The Honorable Walter B. Jones is the Circuit Judge of the Circuit Court of Montgomery County, Alabama before whom said cause is now pending on this defendant's motion to quash service or attempted service of process upon it.

2. On, to-wit, the 19th day of April, 1960, the plaintiff, L. B. Sullivan, in that cause hereinabove referred to pending in the Circuit Court of Montgomery County, Alabama being Case No. 27416 therein, filed a summons and complaint, a copy of which is attached hereto and marked Exhibit A, and incorporated herein and made a part hereof. Therefore, on to-wit; the 20th day of May, 1960, The New York Times Company, a corporation, filed its motion to quash service of process or attempted service of process upon it in said cause, a copy of which is attached hereto and marked Exhibit B, and incorporated herein and made a part hereof. On, to-wit, the 31st day of May, 1960, the plaintiff, L. B. Sullivan in said cause, filed a motion to produce certain documents and papers seeking to require this defendant to produce such documents and papers as referred to in said motion to produce, a copy of which is attached hereto and marked Exhibit C, and incorporated herein and made a part hereof.

On to-wit, the 7th day of June, 1960, plaintiff's motion seeking to require this defendant to produce the papers and documents set forth and described therein as shown by Exhibit C attached hereto came on to be heard before the Honorable Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, and on to-wit the 9th day [fol. 1253] of June, 1960, the said Honorable Walter B. Jones entered his order, judgment or decree granting plaintiff's said motion to produce and requiring this defendant to produce on or before June 30, 1960, all the books, papers and documents and other written materials specified in said motion to produce according to the terms and under the conditions specified in the order, judgment

or decree of the said Judge Jones of the 9th day of June, a copy of which is attached hereto and marked Exhibit D, and incorporated herein and made a part hereof. This defendant was notified of the action of the said Judge in so ruling on to-wit the 15th day of June, 1960, and thereafter on to-wit the 16th day of June, 1960, this defendant filed its exceptions to said ruling in writing as is shown by copy of said exceptions attached hereto and marked Exhibit E, and incorporated herein and made a part hereof.

3. Petitioner shows unto this Honorable Court and alleges that the action of the Honorable Walter B. Jones, Judge, as aforesaid in proceeding to grant plaintiff's motion to require this defendant to produce the books, documents and writings as set forth in plaintiff's said motion marked Exhibit C incorporated herein as specified and ordered according to the order, ruling or decree of the said Walter B. Jones, Judge, as contained in such order, ruling or decree of the 9th day of June, 1960, as shown by Exhibit D incorporated herein, was not authorized by law and was arbitrary, capricious and unreasonable and petitioner has no other remedy by which petitioner may review the correctness or propriety of the rule, order or decree of Walter B. Jones, Judge, as aforesaid than by application for the writ of mandamus to this Honorable Court, and his ruling is unlawful and illegal in the following respects, separately and severally:

A. There was no showing to the court by reference to the pleadings and matters of record of said cause or otherwise that the books, documents and writings contained evidence pertinent or material to the issues made by this defendant's motion to quash service of process pending in said cause.

B. For that it cannot be ascertained from a reference to the pleadings and matters of record in said cause that [fol. 1254] the books, documents and writings required to be produced by this defendant contain evidence pertinent to the issues raised and made by this defendant's motion to quash service of process filed in said cause and there was no independent or other proof or showing offered by plaintiff which made it appear that the said books, writings or docu-

ments did in fact contain evidence pertinent to the issues raised and made by the defendant's motion to quash service filed in said cause.

C. For that the order requiring this defendant to produce the separate and several books, documents and writings as specified in the separate and several paragraphs of plaintiff's said motion to produce constitute a fishing expedition into the private records and files of this defendant without a showing upon the part of the plaintiff that any of such separate and several books, documents and writings contain evidence pertinent to the issues made and raised by this defendant's motion to quash service of process in this cause.

D. For that it is not shown that any of the separate and several documents, books or writings required to be produced by this defendant contain evidence which is necessary or material to the issues presented by this defendant's motion to quash service of process upon it filed in said cause.

E. For that it is not made to appear that the books, documents or writings required to be produced by this defendant are not otherwise available and more accessible to plaintiff, movant, than to this defendant.

F. For that the separate and several items contained in plaintiff's motion to produce constitute in fact interrogatories propounded to defendant rather than the designation or specification of that which is shown to be a book, writing or document containing evidence necessary, material or pertinent to the issues made and raised by defendant's motion to quash service of process upon it filed in this cause.

G. For that the ruling of the said Walter B. Jones, Judge, contained in Exhibit D incorporated herein, "that the written material specified in paragraphs 1 through 21 are necessary and material in that they will reveal the nature and [fol. 1255] extent of the business done by this defendant in the State of Alabama" is not based upon any showing of facts to support said ruling by reference to the pleadings and record in said cause or otherwise.

H. For that the ruling of the said Walter B. Jones, Judge, contained in Exhibit D incorporated herein, "that the said written material specified in paragraph 1 through 21 are normally kept by this defendant in the regular course of its business and are in the possession, custody or control of the said defendant; that the information contained in these materials cannot be had from other sources available to the plaintiff, and are by their nature within the exclusive knowledge of this defendant and exclusively within its custody, possession or control" is not based upon any showing of facts to support said ruling by reference to the pleadings and record in said cause or otherwise.

I. For that it is not shown that those materials called for in paragraph 1 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

J. For that it is not shown that those materials called for in paragraph 2 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

K. For that it is not shown that those materials called for in paragraph 3 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

L. For that it is not shown that those materials called for in paragraph 4 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

[fol. 1256] M. For that it is not shown that those materials called for in paragraph 5 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

N. For that it is not shown that those materials called for in paragraph 6 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

O. For that it is not shown that those materials called for in paragraph 7 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

P. For that it is not shown that those materials called for in paragraph 8 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

Q. For that it is not shown that those materials called for in paragraph 9 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

R. For that it is not shown that those materials called for in paragraph 10 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

S. For that it is not shown that those materials called for in paragraph 11 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

[fol. 1257] T. For that it is not shown that those materials called for in paragraph 12 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

U. For that it is not shown that those materials called for in paragraph 13 of plaintiff's motion to produce are

material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

V. For that it is not shown that those materials called for in paragraph 14 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

W. For that it is not shown that those materials called for in paragraph 15 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by the defendant in the State of Alabama.

X. For that it is not shown that those materials called for in paragraph 16 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

Y. For that it is not shown that those materials called for in paragraph 17 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

Z. For that it is not shown that those materials called for in paragraph 18 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent [fol. 1258] to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

AA. For that it is not shown that those materials called for in paragraph 19 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

BB. For that it is not shown that those materials called for in paragraph 20 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

CC. For that it is not shown that those materials called for in paragraph 21 of plaintiff's motion to produce are material or necessary and contain any evidence pertinent to the issues of the nature or extent of the business, if any, done by this defendant in the State of Alabama.

DD. For that the order, ruling, judgment or decree of the Court requiring this defendant to produce that which is set forth and specified in paragraphs 1 through 21 in plaintiff's motion to produce incorporated herein as Exhibit C constitutes permitting the plaintiff to discover the existence of facts unknown to plaintiff as a basis for allegations necessary to plaintiff's cause of action or as to the jurisdiction of the Circuit Court of Montgomery County, Alabama, and not alleged in plaintiff's complaint.

EE. For that the order, judgment or decree of Walter B. Jones, Judge, as aforesaid requiring this defendant to produce the documents, books or writings set forth in plaintiff's motion to produce constitutes an abuse of discretion upon the part of the said Walter B. Jones, Judge.

FF. For that the books, documents, and writings set forth in paragraphs 1 through 21, separately and severally, of plaintiff's motion to produce are insufficiently designated or described therein to enable this defendant to determine with sufficient degree of certainty that which it is required to produce by the order, ruling, judgment or decree of [fol. 1259] Walter B. Jones, Judge, requiring it to so produce same.

GG. For that this defendant is a non resident of the State of Alabama and a foreign corporation, not doing business in the State of Alabama, or qualified to do business therein, and has not submitted itself to the jurisdiction of the Circuit Court of Montgomery County, Alabama, and the said Circuit Court of Montgomery County, Alabama, has no authority to require the production by it of the books, writings and documents specified and set forth in the plaintiff's motion to produce in this cause.

HH. For that the order, judgment, ruling or decree of the said Walter B. Jones, Judge, requiring this defendant

to produce the books, writings, and documents as set forth in plaintiff's said motion to produce is illegal and unlawful in that the same is violative of due process of law in imposing an undue burden on Interstate Commerce in requiring this defendant, who has not subjected itself and submitted itself to the jurisdiction of the said Circuit Court of Montgomery County, Alabama, to produce from without the State of Alabama the books, writings, papers and documents specified in plaintiff's motion to produce when said defendant is objecting to the jurisdiction of the said Circuit Court of Montgomery County, Alabama, and has not been shown to be subject to its jurisdiction.

II. For that the documents, books, writings or papers specified in plaintiff's motion to produce, copies of which or originals of which are required to be produced, showing the matters and things set forth in separate and several paragraphs of said motion for a period from and after January 1, 1956, inclusive of the first five months of 1960, is outside the scope of the issues presented by this defendant's motion to quash service of process upon it on the question of whether said defendant was doing business within the State of Alabama at the time of purported service of process upon it on April 21, 1960 and April 26, 1960.

JJ. For that the manner and fashion in which the documents, papers and writings set forth in plaintiff's motion to produce are described calls upon this defendant to con-[fol. 1260] strue as a matter of law what it is required to produce by the order, judgment, decree or ruling of the said Walter B. Jones, Judge, of June 9, 1960.

KK. For that the order, ruling, judgment or decree of Walter B. Jones, Judge, of June 9, 1960, is not sufficiently specific in designating, describing or setting forth that which this defendant is required to produce to enable this defendant to know what it is required to produce by the terms of said order, judgment, decree or ruling.

Wherefore, Petitioner prays that a rule nisi issue from this Honorable Court directed to Honorable Walter B. Jones, as Judge of the Circuit Court of Montgomery

County, Alabama, and to Honorable Walter B. Jones, individually, directing him to appear before this Honorable Court at a time and date to be fixed by this Court, then and there to show cause why he should not vacate and annul his order, judgment, decree or ruling of June 9, 1960, requiring this defendant to produce the documents, books, papers and writings set forth and specified therein and in plaintiff's motion to produce as are found and contained in Exhibits D and C incorporated herein, and Petitioner further prays that upon a final hearing hereof this Honorable Court will grant a writ of mandamus or other appropriate remedial writ ordering and directing the said Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, and individually, to vacate and annul said order, judgment, ruling or decree of the said Walter B. Jones, Judge, of June 9, 1960, as found and contained in Exhibit D and incorporated herein.

THE NEW YORK TIMES COMPANY, A Corp.

By /s/ RODERICK M. MACLEOD, JR.
Roderick M. MacLeod, Jr.
Attorney in Fact.

BEDDOW, EMBRY AND BEDDOW, ATTORNEYS

By /s/ RODERICK M. MACLEOD, JR.
Attorneys for Defendant

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

[fol. 1261] Before me, the undersigned Notary Public, in and for said State and County, personally appeared Roderick M. MacLeod, Jr., as attorney in fact and at law for The New York Times Company, a corporation, and who, by me first being duly sworn, deposes and says that the facts alleged in the above and foregoing petition are true and correct, and that he, as attorney in fact and attorney at law, has authority for and in behalf of said The New York Times Company, a corporation, to make

this affidavit and is conversant with the facts set forth and contained in the above and foregoing petition.

This 23rd day of June, 1960.

/s/ Roderick M. MacLeod, Jr.
Roderick M. MacLeod, Jr.

Sworn to and subscribed before me
this 23 day of June, 1960

/s/ Mary B. Wrathersly
Notary Public

To: Honorable M. R. Nachman, Jr., of Counsel for Plaintiff, L. B. Sullivan:

Take notice that the above and foregoing petition for writ of mandamus will be presented to the Honorable Supreme Court of Alabama with the request or prayer that pursuant thereto a rule nisi issue to the Honorable Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, as is set forth in said petition on the 29th day of June, 1960, at 1:00 M., at which time you may appear if you so desire.

This the 24 day of June, 1960.

/s/ Roderick M. MacLeod, Jr.
Roderick M. MacLeod, Jr.

I hereby certify that I have served a copy of the above and foregoing notice on Honorable M. R. Nachman, Jr., Attorney of record for the plaintiff, L. B. Sullivan, by delivering a copy by hand to his office in The First National Bank Building, Montgomery, Alabama. This the 24th day of June, 1960.

/s/ Roderick M. MacLeod, Jr.
Roderick M. MacLeod, Jr.

[fol. 1262]

EXHIBIT A TO PETITION FOR WRIT OF MANDAMUS—SUMMONS AND COMPLAINT

Omitted. Printed at side folios 2-5, pages 1-6, ante.

[fol. 1267]

EXHIBIT "A"

"HEED THEIR RISING VOICES"

Omitted. Printed at side folios 6-9, pages 6-12, ante.

[fol. 1271]

EXHIBIT B TO PETITION FOR WRIT OF MANDAMUS—MOTION TO QUASH SERVICE OF PROCESS

Omitted. Printed at side folios 33-38, pages 39-46, ante.

[fol. 1279]

EXHIBIT C TO PETITION FOR WRIT OF MANDAMUS—MOTION TO PRODUCE

Omitted. Printed at side folios 24-28, pages 29-35, ante.

[fol. 1284] Affidavit of M. R. Nachman, Jr. (omitted in printing).

[fol. 1286]

EXHIBIT D TO PETITION FOR WRIT OF MANDAMUS—RULING OF COURT ON PLAINTIFF'S MOTION TO PRODUCE

Omitted. Printed at side folio 29, pages 35-37, ante.

[fol. 1288]

EXHIBIT E TO PETITION FOR WRIT OF MANDAMUS—EXCEPTION TO COURT'S RULING ON PLAINTIFF'S MOTION TO PRODUCE

Omitted. Printed at side folio 30, page 37, ante.

STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1959-1960

3rd Div., No. 927

EX PARTE:—

[fol. 1289]

THE NEW YORK TIMES COMPANY, a Corporation,
Petitioner

v.

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, vs. Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama.)

From Montgomery Circuit Court.

No. 27416

THE STATE OF ALABAMA.)
)
CITY AND COUNTY OF MONTGOMERY)

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to twenty-two inclusive, contain a full, true, and correct copy of the Petition for Writ of Mandamus filed on June 29th, 1960, in the * * * * * * * * * * Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 19th day of July 1960.

/s/ J. RENDER THOMAS
Clerk of the Supreme Court of Alabama

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 312

OCTOBER TERM 1959-60

THE SUPREME COURT OF ALABAMA

3rd Div., No. 927

Ex parte:—The New York Times, a Corporation, Petitioner

[fol. 1290]

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, v. Honorable Walter B. Jones, Individually, etc.)

Certified Copy of
Memorandum brief of authorities in support of the Petition for Writ of Mandamus filed June 29, 1960, by the Attorneys for the Petitioner

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3 DO 927 Copy

IN THE SUPREME COURT OF ALABAMA, THIRD DIVISION

No. 927

(Filed June 29, 1960 Supreme Court of Alabama J. Render Thomas, Clerk.)

EX PARTE, THE NEW YORK TIMES COMPANY, A Corporation, Petitioner,

vs.

HONORABLE WALTER B. JONES, Individually, and as Judge of the Circuit Court of Montgomery County, Alabama, Respondent.

MEMORANDUM BRIEF OF AUTHORITIES IN SUPPORT OF PETITION FOR MANDAMUS

STATEMENT OF THE CASE

This petition for mandamus has been filed by the petitioner, The New York Times Company, praying that this Honorable Court order Judge Walter B. Jones, as Judge of the Circuit Court of Montgomery County, Alabama, to vacate an order rendered June 9, 1960, requiring the petitioner to produce certain documents, books, papers and writings as set forth in a motion to produce filed by the plaintiff, L. B. Sullivan, in that cause in the Circuit Court of Montgomery County, Alabama entitled L. B. Sullivan, Plaintiff, vs. The New York Times Company, a corporation, et als, being case No. 27416 in that court.

The case in which the said motion to produce was filed was commenced on the 19th of April, 1960, by the filing [fol. 1291] of a complaint in the Circuit Court of Montgomery County, Alabama, in which the plaintiff, L. B. Sullivan, claimed of the New York Times Company, a corporation, and others, damages for an alleged libel that was alleged to have appeared in The New York Times newspaper. In response to this summons and complaint, the defendant, The New York Times Company, filed a special appearance by means of a motion to quash service of process in which The New York Times Company alleged in substance that it was a foreign corporation, not qualified to do business in Alabama and was not subject to the jurisdiction of the Circuit Court of Montgomery County, Alabama.

Subsequent to the filing of the special appearance by The New York Times Company, the plaintiff filed a motion to produce which contained twenty-one (21) paragraphs or groupings of various items that were alleged to be in the possession, custody, control or power of the defendant, The New York Times. This motion was supported by an affidavit by plaintiff's attorney alleging generally that the documents were pertinent to the issues in the case and necessary and material to the presentation of the plaintiff's case.

On the 9th day of June, 1960, Honorable Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, entered an order requiring the defendant, The New York Times Company, to produce on June 30, 1960, in the office of the Clerk of the Circuit Court of Montgomery County, Alabama, all of the books, papers, documents and other written materials requested by plaintiff's motion except those items named in paragraph 2 were limited to the period of time since January 1, 1956 to the date of service. It is this order that petitioner seeks to have set aside or vacated by this petition for mandamus.

MEMORANDUM OF AUTHORITIES

PROPOSITION I

MANDAMUS IS THE PROPER REMEDY TO REVIEW AN ORDER OF THE CIRCUIT COURT REQUIRING A PARTY TO PRODUCE DOCUMENTS, BOOKS OR WRITINGS.

Ex Parte, Anniston Personal Loans, 96 So. 2d 627, 266 Ala. 356.

[fol. 1292] In this case the Supreme Court reviewed on petition for mandamus an order of the Circuit Court requiring the production of certain books and records of Anniston Personal Loans, Inc. The peremptory writ of mandamus was issued.

American Life Insurance Company v. Powell, 65 So. 2d 516, 259 Ala. 70.

In this case the Supreme Court issued the writ of mandamus ordering that the Circuit Judge set aside vacate or annul his order granting an application to perpetuate testimony under the equity rule.

Ex parte National Association for the Advancement of Colored People, 91 So. 2d 214, 265 Ala. 349.

Here the petitioner had been ordered by the Circuit Court to produce certain records in its possession. It failed to do so, and was cited for contempt by the Circuit

Court. The petitioner then filed a petition for certiorari to review the actions of the Circuit Court. This Honorable Court stated that mandamus is the proper remedy to review an order to produce. In its opinion the court stated,

> "An order requiring defendant to produce evidence in a pending cause may be reviewed on a petition for mandamus. Ex Parte Hart, 240 Ala. 642, 200 So. 783. Hence, if petitioner felt it is aggrieved by the order requiring it to produce certain evidence, it should have sought to have the order reviewed by mandamus."

[fol. 1293]

PROPOSITION II

A PARTY TO A CAUSE SHOULD NOT BE REQUIRED TO PRODUCE BOOKS, DOCUMENTS OR OTHER WRITINGS MERELY FOR THE PURPOSE OF PERMITTING THE ADVERSE PARTY TO EXAMINE THEM IN THE HOPE THAT THEY WILL CONTAIN EVIDENCE HELPFUL TO HIS CAUSE. BUT A MOTION TO PRODUCE SHOULD BE GRANTED ONLY WHERE IT IS MADE TO APPEAR BY SATISFACTORY EVIDENCE THAT THE BOOKS, DOCUMENTS OR OTHER WRITINGS DO IN FACT CONTAIN EVIDENCE PERTINENT TO THE ISSUE. AN AFFIDAVIT ALLEGING IN GENERAL TERMS THAT THE BOOKS, DOCUMENTS OR OTHER WRITINGS CONTAIN EVIDENCE THAT IS PERTINENT AND MATERIAL IS NOT SUFFICIENT TO AUTHORIZE THE ISSUANCE OF A MOTION TO PRODUCE, BUT THE AFFIDAVIT MUST CONTAIN FACTS SUFFICIENT TO AFFORD THE COURT A BASIS TO DETERMINE WHETHER OR NOT THE DOCUMENTS DO IN FACT CONTAIN MATERIAL AND PERTINENT EVIDENCE.

Steverson vs. W. C. Ages and Company, 70 So. 298, 14 Ala. App. 448.

In this case there was no evidence offered by the defendant in support of his motion to produce that if the ledger requested were produced it would contain any evidence

material to the issue. The Court of Appeals affirmed the Circuit Court's refusal to grant the motion and held that courts are not required to grant a motion to produce books, documents or other writings merely for the purpose of affording a fishing expedition merely to give the movant an opportunity of discovering by an examination of them whether or not any contain evidence beneficial to him. As a prerequisite to the granting of a motion it must satis- [fol. 1294] factorily appear that the documents requested do in fact contain evidence pertinent to the issue.

Ex Parte Darring, 7 So. 2d 564, 242 Ala. 624

Here the motion to produce was granted where it was supported by an affidavit describing the document in particularity and stating in detail the facts which would be revealed by the document. In the opinion the court discussed the procedures available to a party to obtain inspection of the opposing party's documents, and indicated that motions to produce would be correctly granted when it has been established through the use of discovery procedure such as interrogatories that the documents requested do in fact exist and what facts they contain or would reveal. The court further stated,

> "A fishing expedition through books of account as well as a fishing expedition as the objective of the proceeding are not to be tolerated."

Gordon vs. United States, 344 U.S. 73 Supreme Court 367 97 L. Ed. 447.

The United States Supreme Court held that the defendant was entitled to the production of certain documents in the file of the prosecuting attorney and held that the defendant was entitled to these documents by reason of having established by evidence that the documents were in existence, were in possession of the government, were made by the witness under examination, were contradictory of the present testimony, the contradiction was as to relevant, important and material matters which directly bore on the main issues being tried. The court indicated that in the

absence of these facts being proven in support of the mo-
[fol. 1295] tion to produce that the defendant would not have been entitled to have them produced. The court stated,

"The demand was for production of these specific documents and did not propose any blind fishing expedition among documents possessed by the government on the chance that something impeaching might turn up."

Ex rel. Page v. Terte, 324 Mo. 925, 25 SW 2d 459

"It is clearly appears from the opinion above quoted that the respondent's authority to make the proposed order of production must be found in section 1378 R.S. 1919. Turning to that section, we find that the court before which an action is pending may order either party to give the other an inspection and copy of any paper in his possession or under his control, containing evidence relating to the merits of the action or defense therein. By the plain terms of this statute, the court is not authorized to order the production of a paper unless it contains evidence material to the pending action. It therefore follows that the burden is on the party seeking an order to produce, to bring himself within the terms of the statute, by alleging in the application for the order, facts sufficient to identify the papers called for, and from which the court could reasonably infer that such papers contain evidence material to the merits or defense of the action in which the order is sought. Otherwise, the court would not be authorized to make the order. [fol. 1296] State v. Fitzgerald, 130 Mo. 407, 424, 32 So. W. 1113; State ex rel. v. Trimble, 254 Mo. 542, 553, 163 S.W. 860.

(2, 3) In the case at bar, the application for the order does not measure up to the requirements of the statute. It calls for the production of all deeds, mortgages, bills of sale, books, documents, papers, or other written copies of evidence in the hands of the prosecuting attorney, which are in any way connected with the case then pending. There is no hint or suggestion as to the contents of these documents, and no facts are

alleged tending to show that they contain any evidence material to the defense of the party asking for their production. It is true that the application for the order states that such documents are or may be material, but such an allegation is a mere conclusion of the pleader and presents no issue. In 10 R. C. L. p. 1092, Sec. 292, the rule is thus stated: "* * * But a party to a pending action has no right to call for the books, papers, and documents of his adversary merely for the purpose of entering into a "fishing examination" of them. To authorize their production there must be a substantial showing that the book, paper, or document sought for contains material evidence in support of the cause of action or defense of the party asking for it. A mere suspicion that it contains such evidence does not warrant an order for its production. The enactments upon the subject generally make it a [fol. 1297] condition that the books, etc., required shall contain evidence relating to the merits of the case."

City National Bank vs. Wofford, 75 SW 2d 666, 189 Ark 914.

"(4) The rule, against which the order is deemed to offend, is cited by the defendants and is found at page 1092, 10 R.C.L., as follows: 'But a party to a pending action has no right to call for books, papers and documents as to his adversary merely for the purpose of entering into a 'fishing examination' of them. To authorize their production there must be substantial showing that the book, paper or document sought for contains material evidence in support of the cause of action or defense of the party asking for it. A mere suspicion that it contains such evidence does not warrant an order for its production. The enactments upon the subject generally make it a condition that the books, etc., required shall contain evidence relating to the merits of the case."

Section 1393 of Elliott on Evidence provides: "The fundamental requirement as to the sufficiency of the motion or petition is that it must be shown upon good

and sufficient cause that the books, papers or documents sought to be produced or inspected contain evidence material and pertinent to the issues and on behalf of the applicant. • • • *It is not sufficient to allege generally the materiality of the books or documents, as this would not only be the averment of a conclusion, but would permit the question of material-*
[fol. 1298] *ity to be decided by the applicant instead of the court. Hence it is not sufficient to allege that such books or papers contain evidence relative to the merits of the action, but it must be made to appear where in such relation consists.* In other words, the rule, as stated by the courts: 'It is well settled, that an order for discovery and inspection will never be granted unless the necessity therefor is clearly shown'." (italics ours)

Respectfully submitted,

BEDDOW, EMBRY & BEDDOW

BY: Roderick M. MacLeod, Jr. /s/
Roderick M. MacLeod, Jr.,
Attorneys for The New York Times Company, a corp.

STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1959-1960

3rd Div., No. 927

EX PARTE:—

THE NEW YORK TIMES COMPANY, a Corporation, Petitioner,

v.

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, vs. Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama.

[fol. 1299]
The State of Alabama,
City and County of Montgomery.

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered one to seven inclusive, contain a full, true, and correct copy of the Memorandum brief of authorities in Support of the Petition for Writ of Mandamus filed in the ..... Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 19th day of July, 1960.

/s/ J. Render Thomas
Clerk of the Supreme Court of Alabama

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 313

COPY

OCTOBER TERM 1959-60

THE SUPREME COURT OF ALABAMA

3 Div., No. 927

EX PARTE:—THE NEW YORK TIMES COMPANY,
a Corporation, Petitioner,

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, v. Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama.)

FROM Montgomery Circuit Court No.—27416

CERTIFIED COPY OF
ORDER DENYING THE WRIT AND
DISMISSING THE PETITION
JUNE 29, 1960

[fol. 1300]

COPY

JUNE 29, 1960

THE STATE OF ALABAMA—
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1959-60

3 DIV. 927

EX PARTE:—THE NEW YORK TIMES COMPANY,
a Corporation, Petitioner,

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, vs. Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama.)

(Montgomery Circuit Court)
No.—27416

Comes the Petitioner, The New York Times Company, a Corporation, by Attorneys, and the Petition for Writ of Mandamus being argued and submitted and duly examined and understood by the Court,

IT IS CONSIDERED AND ORDERED that the Writ be and is hereby denied, and that the Petition be and is hereby dismissed at the cost of the Petitioner, The New York Times Company, a Corporation, for which costs let execution issue accordingly.

[fol. 1301]

STATE OF ALABAMA—
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1959-60

3rd Div., No. 927

EX PARTE:—THE NEW YORK TIMES COMPANY,
a Corporation, Petitioner,

v.

PETITION FOR WRIT OF MANDAMUS

(In re:—The New York Times Company, a Corporation, v. Honorable Walter B. Jones, Individually and as Judge of the Circuit Court of Montgomery County, Alabama.)

(Montgomery Circuit Court)
(No. 27416)

The State of Alabama
City and County of Montgomery

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing page contains full, true and correct copy of the Order Denying the Writ and Dismission the Petition Made and Entered June 29, 1960, By • • • • • • • • • • said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 29th day of June, 1960.

/s/ J. RENDER THOMAS
Clerk of the Supreme Court of Alabama

[fol. 1302]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 314

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 578

L. B. SULLIVAN, Plaintiff,

v.

THE NEW YORK TIMES COMPANY,
A Corporation, et als., Defendants.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 579

EARL D. JAMES, Plaintiff,

v.

THE NEW YORK TIMES COMPANY,
A Corporation, et als., Defendants.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 580

FRANK W. PARKS, Plaintiff,

v.

THE NEW YORK TIMES COMPANY,
A Corporation, et als., Defendants.

To Attorney Fred Gray, 34 North Perry Street, Montgomery, Alabama, as attorney of record for defendants

Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery,

and

To Messrs. Beddow, Embry and Beddow, 204 Massey Building, Birmingham, Alabama, Attorneys for The New York Times Company, a Corporation:

Please Take Notice that at 10:00 A.M. on the 24th day of June, 1960, in the offices of Walter Graham, official court reporter of the Circuit Court of Montgomery County, Alabama, Court House, Montgomery, Alabama, plaintiffs will take the depositions of defendants Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth and J. E. Lowery.

[fol. 1303] The above depositions will be taken by oral examination, pursuant to Act No. 375 of the Regular Session of the 1955 Alabama Legislature (Title 7, Section 474 (1) and 474 (18), Code of Alabama 1940 as amended), said Walter Graham being an officer authorized to administer oaths by the State of Alabama.

This oral examination will continue from day to day until completed. You are invited to attend and cross examine.

These said defendants will be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim of the plaintiffs or the defense of the defendants, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things, and the identity of persons having knowledge of relevant facts.

This June 15, 1960.

/s/ Steiner, Crum & Baker
Steiner, Crum & Baker

By /s/ M. R. Nachman, Jr.
M. R. Nachman, Jr.

/s/ Scott, Whitesell & Scott

By /s/ Calvin Whitesell
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

Case No. .....

L. B. SULLIVAN, EARL D. JAMES, & FRANK W. PARKS, Plaintiffs,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY, Defendants.

[fol. 1304] Deposition of J. E. LOWERY taken on behalf of the Plaintiffs, pursuant to the provisions of Act No. 375, approved September 8th, 1955, being Title 7, Section 471 (1) et seq., of the Code of Alabama, 1940, as amended, before Walter E. Graham, Official Court Reporter of the 15th Judicial Circuit of Alabama at the Court House, Montgomery, Alabama, Saturday, June 25th, 1960.

STIPULATION

It is stipulated by and between the parties that this deposition is being taken before Walter E. Graham, Official Court Reporter of the 15th Judicial Circuit of Alabama. It is agreed that all formalities in connection therewith are waived. It is agreed that the signature of the witnesses are hereby waived; the oath administered by the Commissioner being sufficient. It is agreed that objections, except as to the form of the question and to leading questions, need not be made or noted at the taking of the deposition, but may be made at the time the deposition is offered in evidence and any legal grounds may be assigned in support of said objections.

Mr. MacLeod: It is stipulated and stated for the Record that the presence of counsel for the defendant, The New

York Times Company, is strictly in connection with the special appearance made by The New York Times Company to test jurisdiction of the Circuit Court and is not in any wise a general appearance and not in any wise a waiver of the defendant, The New York Times Company, special appearance and is not a submission to the jurisdiction of the Circuit Court and is not a general appearance in this cause.

Mr. Baker: The plaintiff would like to state for the Record that these depositions have nothing whatsoever to do with the special appearance of The New York Times [fol. 1305] and we don't expect to adduce any testimony that would be relevant or pertain to the special appearance. This deposition relates solely to the merits of the controversy.

Mr. Nachman: In amplification of Mr. Baker's statement, the primary purpose of this discovery is on the merit. Of course, we don't restrict the use of this deposition in any way at any stage of the proceedings. It is my understanding that three of the defendants will be here for this?

Lawyer Gray: That's right.

Mr. Nachman: We can continue or adjourn the deposition to take Rev. Shuttlesworth at a later date under the same agreement we have—

Lawyer Gray: That's agreeable, yes.

[fol. 1306]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 315

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

No. 578

L. B. SULLIVAN

vs.

THE NEW YORK TIMES Co.,
a corporation, et al.

No. 579

EARL D. JONES

vs.

THE NEW YORK TIMES Co.,
a corporation, et al.

No. 580

FRANK W. PARKS

vs.

THE NEW YORK TIMES Co.,
a corporation, et al.

The Depositions of CLAUDE F. SITTON and THOMAS M. HURLEY, taken pursuant to Notice on file with the Clerk of the Circuit Court of Montgomery County, Alabama, by the plaintiffs in the above styled cases, pursuant to Act 375

of the Regular Session of the 1955 Alabama Legislature, before Burma Denny, Notary Public and Deposition Commissioner, at 1504 Healey Building, Atlanta, Georgia, at 10:00 o'clock A. M., on Friday, June 3, 1960.

APPEARANCES

For the Plaintiffs:	Steiner, Crum & Baker by M. R. Nachman, Esq. and Sam Rice Baker, Esq.
For the Defendants:	Beddow, Embry & Beddow, by T. Eric Embry, Esq.
The New York Times Co.	Thomas Daly, Esq.
Ralph D. Abernathy: Fred L. Shuttlesworth S. S. Seay, Sr. J. E. Lowery	Fred D. Gray, Esq.

[fol. 1307]

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Mr. Embry: Let the record show, Roland, that Mr. Daly and I appear for the sole purpose of cross-examination of this witness on any testimony elicited pertinent to the grounds of the Motion to Quash filed by the defendant New York Times Company in this case, and that by appearing we in no wise waive our limited and special appearance filed by filing the Motion to Quash, nor do we make any general appearance in the cause but appear solely at the taking of this deposition to cross-examine as to evidence pertinent to the grounds contained in the Motion to Quash on the basis of the jurisdiction of the Court and expressly objecting to the jurisdiction of the Court.

Mr. Nachman: I might state at this point we have stipulated with counsel for The New York Times that we understand that their appearance, or the appearance of their

agents, at this deposition in no manner waives any grounds raised by their Motion to Quash Service and it is stipulated that it shall not be considered as a general appearance in this case.

(Discussion off the record.)

Mr. Nachman: This deposition proceeding is taken pursuant to Act 375 of the Regular Session of the 1955 Alabama Legislature. It is stipulated that the signature of the deponents is waived.

The witness, CLAUDE F. SITTON, being first duly sworn, testified as follows:

[fol. 1308] Examination by Mr. Nachman:

Q. Would you state your name, please, sir?

A. Claude—C-l-a-u-d-e—F., as in Frank, Sitton.

Q. Are you a resident of Atlanta?

A. That's correct.

Q. Am I correct that you are employed by The New York Times Company, the defendant—one of the defendants in this case?

A. I am employed by The New York Times, yes.

Q. There's no distinction between The New York Times as you use it and The New York Times Company, Incorporated?

A. I don't think so.

Q. Would you consult with your attorneys and see whether there is any distinction?

Mr. Embry: That's correct.

Mr. Daly: I don't think it's "Incorporated;" it's The New York Times Company.

Mr. Embry: A company.

Q. A corporation. How long have you been employed by The New York Times, Mr. Sitton?

A. Since October, 1957.

Q. Beginning with that date, would you state for the record what your duties have been with The New York Times?

A. From October, 1957, until May, '58, I was employed as a copy editor with The New York Times in New York, resident of New York City. In May of 1958, I was transferred to the South as Southern Correspondent of The New York Times.

Q. I might interrupt at that point. At what place—to what place were you transferred in the South at that time, or did you continue to live in New York?

A. Well, my family continued to live in New York until July of '58, and I actually had no residence as such.

Q. In other words, the change of assignment at that time did not—

A. Well, my legal residence all along had been Rockdale County, Georgia—my legal residence, that's where I voted [fol. 1309] and so forth. I actually only rented an apartment in New York.

Q. Go ahead.

A. And since May of '58, I have covered the South for The New York Times, southern territory.

Q. You have, you say, held the same position with The Times since that date in 1958?

A. That's correct.

Q. Up to the present time?

A. That's correct.

Q. What is your position in Atlanta, what is the title that you have, is it Southern correspondent?

A. Southern Correspondent.

Q. The Times does have an office in Atlanta, does it not?

A. I have desk space at the Constitution.

Q. I see. How many employees does The Times have in Georgia, in Atlanta?

A. Two that I know of.

Q. You and Mr. Hurley?

A. No, myself and a part-time secretary.

Q. Did John Popham ever live in Atlanta?

A. No.

Q. Did he ever have a position as southern correspondent of The Times?

A. Yes, he did.

Q. He was your predecessor?

A. That's correct.

Q. In a general way, Mr. Sitton, would you outline what your duties are as Southern Correspondent of The New York Times?

A. Well, to cover news in the South.

Q. Gather news?

A. That's correct.

Q. What area is embraced by the term "South" as you use it?

A. Virginia, Kentucky, North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas.

Q. Does The Times have other so-called regional correspondents—if that is the correct phrase—such as yourself for other regions? [fol. 1310]

A. Yes.

Q. How many other regions constitute the geographical breakdown?

A. Well, actually, some of these men are not—well, we have a man in Boston, have a man in Detroit, have two men in Chicago, one man in San Francisco, two men in Los Angeles, one man in Hollywood.

Q. I take it from your earlier testimony that Atlanta is your base of operations, so to speak?

A. That's correct.

Q. Is it your duty, Mr. Sitton, to regularly canvass the current events that are taking place in these states you have named and to transmit to The Times any newsworthy events that occur in those states?

A. No, only selected events.

Q. Who selects them?

A. Sometimes I do, sometimes The Times does.

Q. In other words, sometimes you're sent into these various states on special assignment from the New York office and other times—

A. It's sort of a case of mutual agreement. Some stories there's no question we should cover. Other stories, I confer with the desk in New York and after talking it over, we reach a mutual decision on it.

Q. Mr. Sitton, this is probably elementary to you but for those of us who aren't so well versed in the newspaper business, would you mind explaining how a news story, let's say, gets to The New York Times for publication; suppose you're covering a news event in one of these states, how would you get the story to The New York Times from that state?

Mr. Embry: We object to that question as being too vague as to a news story unless it's specified some particular story or unless the question calls for an illustration of the particular incident.

Mr. Nachman: All right. I'll make it more specific.

By Mr. Nachman:

Q. Mr. Sitton, do you recall that on a Sunday, March 6, 1960, where you covered a so-called demonstration in the City of Montgomery, Alabama?

[fol. 1311] A. I think I did, yes.

Q. You were present in Montgomery on that date?

A. I think so.

Q. And you recall the demonstration I'm talking about which occurred on the corner of Dexter and Decatur Streets in Montgomery near the capitol in front of Martin Luther King's church and the Supreme Court Building?

A. I don't recall the demonstration. I was there, there was some trouble there.

Q. I didn't mean too put the word "Demonstration" in your mouth. You recall the occurrence there?

A. I recall an occurrence there. I was there, yes.

Q. In terms of Mr. Embry's objection, did you send a story to The New York Times covering that occurrence?

A. Yes, sir.

Q. Would you state how that story got to The Times for publication?

A. I called it in.

Q. From Montgomery?

A. That's correct.

Q. You dictated the story over the telephone?

A. That's correct.

Q. To someone in New York?
A. It was recorded on a plastic disk, yes.
Q. In New York?
A. Yes.
Q. In the offices of The New York Times?
A. Correct.
Q. In addition to the correspondents, the regional correspondents, that you named and specifically in the states that come under your jurisdiction, does The Times have so-called string correspondents in these states and specifically in Alabama?

Mr. Embry: We object unless it is shown whether he knows whether they have or not.

Q. Do you know?
[fol. 1312] A. You refer to my jurisdiction there. This is not really my jurisdiction; I have no—I'm—I'm simply a reporter down here, I cover the South and, as I said before, I told you the basis. I have no—no jurisdiction whatsoever over any other operations that might be conducted in this area.
Q. Well, do you know, or don't you, whether there are located in Alabama certain so-called string correspondents?
A. I know one stringer in Alabama, yes.
Q. What is his name?
A. Don McKee.
Q. Do you know a man in Birmingham named John R. Chadwick?
A. No, sir.
Q. Do you know whether or not he is a string correspondent?
A. I don't know him, how could I know?
Q. I thought you might be making a distinction between knowing him personally—
A. I've never talked to him, I've never met him.
Q. Do you know of his existence?
A. That would be hearsay, wouldn't it?

Mr. Embry: Don't argue with him.

Q. Whether it would be hearsay or not—
A. I've heard that there is such a man there, yes, sir.

Q. And you've heard that he is a string correspondent?

A. Yes.

Q. —for The Times? Do you know, either personally or through hearsay, of a man named Castle in Mobile who—

A. I've heard of his name—heard his name mentioned once.

Q. As a string correspondent of The Times?

A. Yes.

Q. Do you know a man named William McDonald in Montgomery?

A. Yes.

Q. Do you know whether or not he was at one time a string correspondent for The Times?

A. He told me he was.

[fol. 1313] Q. Do you know a man named G. C. Long in Montgomery?

A. No.

Q. Do you know a man named Murphy in Montgomery who was at one time a string correspondent for The Times?

A. What is his full name?

Q. Charles Murphy, I believe.

Mr. Daly: You believe to be.

A. I don't know. I don't know this man was a former string correspondent of The Times. Whether I've met him or not, I do not know, I don't recall. I don't recall ever meeting a man by that name but it's possible, but I don't know him as a former string correspondent for The Times.

Q. What are the duties of a string corrspondent, Mr. Sitton?

A. I've never been a string correspondent, I couldn't testify to that.

Q. Do you, as a result of having been with The New York Times since 1957, I believe you said—is that correct?

A. Correct.

Q. Do you know from general knowledge you have obtained of the workings of The New York Times what the duties of a string correspondent are?

Mr. Embry: We object to that, as to what the duties of a string correspondent are, as it is not shown that this witness is either a string correspondent or that he has—

Mr. Baker: The question was did he know of—
Mr. Embry: —or that such have any duties.

A. I have no connection with the string correspondents. They—as far as I know, all the string correspondents directly are under New York.

Q. Yes, sir. I didn't ask you under whose supervision they were; I asked you whether you knew what their general duties were from your knowledge of the workings of The New York Times.

Mr. Embry: We object to that as it calls for an outline of duties and assumes in the question that they have duties which would assume that they have some contractual relationship or employment contract with the defendant, The New York Times.

Q. Will you go ahead and answer?

[fol. 1314] Mr. Nachman: Are you directing witness not to answer or making your objection for the record?
Mr. Embry: No, he can answer.

A. Would you restate the question?

Mr. Nachman: (To the reporter) Would you read the question, please?

(The previous question was read by the reporter.)

Q. I am, of course, referring to string correspondents.
A. I assume they file stories to The Times, news stories.
Q. Mr. Sitton, I don't mean this as an exclusive breakdown but I have noticed, in reading The Times, that there seem to be several ways in which a story is identified—in some instances, it is identified by a by-line written by a correspondent such as yourself; in other instances, it's identified by either an AP or UP symbol.
A. Yes.
Q. In that instance, I take it The New York Times is getting its story from the wire services of either the AP or UP as the case may be, is that correct?
A. I suppose it's correct, yes.
Q. In a third instance, there is—the story is identified as it is on Page 50 of the Sunday, April 10—Sunday, Sun-

day paper, April 10, 1960, edition of The Times, a page of which I show you.

A. With just a "Special" slug on it.

Q. That's correct.

A. They use that sometimes on my stories. For example, I may have three or four stories in the paper and we have a rule only—they give only one by-line and I get a by-line on one story and the other stories have "Special, New York Times."

Q. When a story is identified as it has been in this issue of the Times—let me identify this for the record as Plaintiff's Exhibit 1.

(The document referred to was identified by the reporter as follows: 6-3-60 P-1 B. D. It is attached hereto as a part of this deposition.)

Q. When it's identified as it is here now, "Special to The [fol. 1315] New York Times," and then a Montgomery, Alabama, dateline, does that indicate that the story or the basis—the facts that form the basis of the story have been sent in to The New York Times office by someone in Montgomery?

Mr. Embry: We object to that; it's a conclusion of—calls for a conclusion on the part of the witness.

A. I don't really know, I can't say. I mean I just don't know.

Q. Well, doesn't The Times have some general methods of identifying news stories, doesn't this "Special to The New York Times" phrase mean anything in the manner in which The New York Times identifies its stories?

A. It means it's a special.

Q. What does that mean, that it's a special?

A. Well, as I say before—I said before, sometimes I file stories that don't have my by-line on them but have "Special to The New York Times."

Q. Let me put it this way, Mr. Sitton. It does indicate, does it not, it did not come in from one of the wire services, isn't that correct?

A. I think—I think that would be correct, yes.

Q. In other words, when The Times is using a wire service story, it identifies it either AP or UP? I don't know whether they use INS, but anyway, either AP or UP; is that correct?

A. Sometimes. Sometimes they put it in the body of the story.

Q. There is an attribution when they use an AP or UP story, is there not?

A. I'm a reporter, I'm not a desk man. I don't work in New York now.

Q. I understand that.

A. I can't—I cannot—I think so, as far as I know. But I can't testify to that from first-hand knowledge.

Q. And your testimony is you don't know, then, what the phrase, "Special to the New York Times"—

A. Yes.

Q. —is designed to connote?

A. It means it's a special; it isn't sent in by the wire—either of the wire services.

[fol. 1316] Q. Do you know what category of persons send those stories in?

A. I send them in.

Q. You send them in?

A. Yes.

Q. Or some other correspondent?

A. No, not another correspondent necessarily.

Q. I don't mean for this particular story. I mean—

A. Yes. Stringers, they send in stories, I think, that are slugged in that manner.

Q. That's what I was getting at. When stringers send in those stories, they are also designated "Special to The New York Times," are they not?

A. I think so, yes.

Q. In a fourth category of stories, there's no identification whatever; it's just a story, so to speak.

A. Yes.

Q. What does that indicate, is that a rewrite or—

A. No, the small city stories that don't carry a by-line generally carry no slug at all.

Q. Mr. Sitton, do you recall any discussion you had with Don McKee, specifically in around the time of the Civil Rights Commission hearings in Montgomery in late December of 1958 and early January, 1959, about becoming a string correspondent for The New York Times?

A. I did talk with him about it, I think, yes.

Q. And did you specifically solicit for The Times his services as a string correspondent for The Times?

Mr. Embry: We object to the—to that as it doesn't call for what was said by Sitton and what was said by McKee but calls for a conclusion upon his part as to what was meant by the word "solicitation." If you're going into a conversation, show what was said by him and what was said by McKee.

Mr. Nachman: You're not directing the witness not to answer but just objecting, as I understand it.

Mr. Embry: Objecting to the form of the question.

Mr. Nachman: You're not directing the witness not to [fol. 1317] answer but just registering an objection.

By Mr. Nachman:

Q. Go ahead.

A. Would you restate the question, please?

Q. (Read by the reporter) And did you specifically solicit for The Times his services as a string correspondent for The Times?

Mr. Embry: We object to that and we direct the witness not to answer, as calling for a conclusion as to what is meant by "solicitation." We do not object to the question asking what was said by him and what was said to McKee.

Q. Was there a conversation?

Mr. Baker: Wait a minute.

Mr. Embry: I'm directing him not to answer.

By Mr. Baker:

Q. Are you declining to answer?

Mr. Embry: I'm directing the witness not to answer that in the form asked.

Mr. Baker: Well, the witness can follow your direction or he can't. We want the record to show which he's going to do.

Mr. Embry: I will let the witness speak as to whether he's going to follow my direction or not.

A. I am following his direction.

By Mr. Nachman:

Q. Do you decline to answer?

A. I decline to answer.

Q. Mr. Sitton, was there a conversation at the times—during the period I have indicated in Montgomery between you and Don McKee regarding his becoming a string correspondent for The New York Times?

Mr. Daly: (To the reporter) Will you read that question?

(Question read by the reporter.)

Mr. Daly: At the Times?

Mr. Nachman: During this period of late December and early January.

Mr. Daly: I thought you were referring to The Times.

Mr. Nachman: No, the period.

A. To the best of my knowledge, I spoke to McKee and [fol. 1318] told him that we had no stringer in Montgomery and I thought The New York Times was interested in a stringer and asked him if he were interested. He indicated he was. I told him I would pass his name on to New York, that they would get in touch with him.

Q. Was Mr. McKee recommended to you by anybody or did you happen to know him personally?

A. I don't really recall. I had known him. I had met him on visits to our advertiser. I don't recall, he might have been. I might have spoken to someone about him, asked whether he was a good man or I might have seen some story he had written. I don't recall.

Q. In answering the question, you used the word "interested," that The Times was interested in having a

stringer in Montgomery; why was The Times interested in having a stringer in Montgomery?

Mr. Embry: We object to that; it would call for a conclusion on the part of the witness. It calls for the mental operation and a statement as to what is contained in the mind and thoughts of another person.

Q. Do you decline to answer the question?

Mr. Embry: I direct him to not answer that question in the form asked.

Q. Do you decline to answer the question, Mr. Sitton?
A. I decline to answer that.
Q. How did you know The Times was interested in having a stringer in Montgomery?
A. They had told me.
Q. Did they give any reason why they were interested in having one in Montgomery?

Mr. Embry: We object to the unless it calls for what was said and by whom and direct him not to answer it as far as did they give a reason.

Q. Do you decline to answer?
A. I decline to answer.
Q. Who told you that The Times in—was interested in having a stringer in Montgomery?
[fol. 1319] A. To the best of my knowledge, it was Harold Faber, the assistant national news editor.
Q. As a matter of fact, he's in charge of all the stringers for The Times, is he not?

Mr. Embry: We object to that as to what is meant by "in charge of" and as not calling for knowledge that is in possession of this witness.

Q. Do you decline to answer the question?
A. I decline to answer.

Mr. Nachman: Are you directing the witness not to answer?
Mr. Embry: I direct him not to answer it in the form asked.

Q. What are Mr. Faber's duties in regard to stringers?

Mr. Embry: If you know.

A. I don't feel competent—I don't feel competent to answer that question. I don't work in New York.

Q. You don't know?

A. No. I don't work in New York. I've never worked on the national news desk. I just—I don't feel I'm competent to answer.

Q. It's your testimony here you have no knowledge whatever of the relationship between Mr. Faber, Mr. Harold Faber, and the stringers?

A. I don't think I said that.

Q. I'm asking you is that your testimony?

A. No.

Q. Would you state what knowledge you have about Mr. Faber's relationship with the stringers?

A. Could you ask me a specific question about—you're asking me to generally describe his relationship with the stringers?

Q. That's correct.

A. I don't know that. If you ask me a specific question about his relationship with the stringers, possibly I can answer.

Q. Well, would—

A. I can't generally give you a description of what he does, no.

[fol. 1320] Q. I'm asking the question that way. If it is your answer you can't tell me what general knowledge you have about Mr. Faber's relationship with the stringers, that's your choice.

A. Well, now, the best of my knowledge, and this is—this is—this is almost completely hearsay because I have never been present at any time when Mr. Faber had any dealings with stringers. Mr. Faber—he gets in touch with these stringers when he's interested in having a report on some event that's taking place and requests that they file a story.

Q. What does he have to do with the employment of stringers?

Mr. Embry: We object to that as the question assumes that the stringers are employed by The Times and I direct you not to answer it.

The Witness: I don't think I could answer that anyway because I don't know.

Q. What is the status of a stringer with regard to The Times?

Mr. Embry: We object to that; it calls for a conclusion on the part of the witness.

A. It's outside of my province.

Q. Mr. Sitton, I understand you may not know everything about these questions I'm asking you and of course you're free to limit the extent of your knowledge any way you want to. But this is a discovery proceeding and we intend to obtain this discovery as fully as possible. I think it might save us all a lot of time and expense if you would answer the questions to the best of your knowledge and as fully as possible, limiting the answers in any way you see fit. I'm not trying to ask you to go beyond the scope of your knowledge.

A. I'm trying to be as cooperative as possible.

Q. It will save a lot of time and expense.

A. Surely. I would like that.

Mr. Embry: We don't view this as discovery but rather our view of it would be that the deposition is being taken for use as evidence in connection with the hearing.

Mr. Baker: Taken under Act 375, which is a discovery [fol. 1321] deposition.

Mr. Embry: On the Motion to Quash, it is our view you would not have any right to discovery on grounds contained in the motion.

Mr. Baker: Let the record show that if this keeps up, we're going to ask to tax you all with the entire cost of this proceeding.

Mr. Embry: That's your privilege.

Mr. Nachman: And also ask the Court to take further proceedings in Montgomery because we have undertaken this at considerable expense at a place where Mr. Sitton lived for his convenience. And we do intend to discover

fully. The Notice was quite plain that this deposition is being taken under Act 375, within the scope of that Act.

By Mr. Nachman:

Q. Mr. Sitton, I would like to get back to my question as to those operations and ask you again to give us your knowledge and information about the relationship of the stringers to The New York Times.

A. Well, as I said, they file—I assume—I suppose that they file stories to The New York Times from time to time for which they are paid.

Q. And are they people who are on call from The Times to file stories when The Times wants a story from a given area where they live?

Mr. Embry: We object to that; it calls for a conclusion upon his part and I direct him not to answer what is meant by "on call."

Q. Does The Times regularly ask these stringers for stories regarding certain news events in the areas in which these stringers live?

A. What do you mean by "regularly"?

Q. Well, is this a regular procedure of The Times, that when The Times feels that there is a news story of note going on in an area where a particular stringer lives, that The Times calls on this stringer for a story?

A. I will answer your second question Yes.

Q. And that's the purpose of having the stringer there, isn't it?

A. Sure.

Q. Of course it is. Am I not also correct Mr. Faber for The Times—or at any rate, The Times sends out instruc-[fol. 1322] tions to the stringers, general instructions about how they are to conduct their business and their operations?

A. I don't believe I can—you can ask me to testify that. I don't work in New York. I'm not connected with the stringer system. I work in Atlanta; I'm a reporter, that's all. How do I know what Mr. Faber does? I've never seen Mr. Faber send out any instructions, no.

Q. Do you know of your own knowledge or through your

general knowledge of the operations of The Times whether a general set of instructions is sent out to stringers?

A. A general set of instructions?

Q. General instructions in written form.

A. I've heard that there was, yes.

Q. That general instructions are—in written form are sent out to the stringers?

A. Wait a minute, now. Would you go into this "general instructions"? What do you mean by "general instructions"?

Q. I mean instructions to the stringers about how they are to conduct their business insofar as it relates to The New York Times.

A. Conduct their business?

Q. The business of sending news stories in.

A. I think I've heard that instructions are sent out as to how they should transmit the stories, giving telephone number, that sort of thing, yes.

Q. And those instructions emanate from the home office, so to speak, in New York?

A. So I've heard, yes.

Q. Have you heard anything to the contrary?

A. No.

Q. Do you have anything to do with the advertising?

A. No, sir.

Q. Do you know how ads are obtained from advertisers in Alabama for The New York Times?

A. No, sir.

Q. Mr. Sitton, when you go to Alabama—let's use your [fol. 1323] March 6th trip—are your expenses paid by The New York Times?

A. Yes, sir.

Q. What procedure do you follow in submitting your expenses to The New York Times for reimbursement?

A. I file a—file an expense account which is in the amount and I'm reimbursed for the amount of the expenses.

Q. Do you have regular specified forms for sending it in or do you send it in in your own way?

A. No, I have forms.

Q. Those forms are furnished by The Times?

A. That's correct.

Q. And are you reimbursed by check or other—special voucher?

A. They reimburse my account in a local bank.

Q. Does that mean that The Times deposits in a bank of your designation an amount equivalent to the amount you submit on your particular expense account?

A. If they agree with the expense account.

Q. Yes, on that assumption, of course.

A. That's correct.

Q. I assume that they would never disagree with such an able reporter as yourself.

A. Thank you, sir.

Q. It is, as I understand it, part of your job, Mr. Sitton, to be where the newsworthy events are going on in the area covered by a southern correspondent; is that correct?

A. Yes, sir.

Q. Would you consider that during the past four years Alabama has been a rather newsworthy state?

A. Not—not overly so, really, no. That's the last four years; I've only been down here.

Q. Let's cut it off—

A. Yes, at the period I've been in the South.

Q. Yes, sir.

A. I wouldn't say overly so. I have—goodness alive! [fol. 1324] I've spent much more time in other states than I have in Alabama.

Q. Have you spent as much time continuously in other states?

A. Oh, yes.

Q. Leaving out where you live?

A. Yes, yes, goodness.

Q. No, Mr. Sitton—

A. For example, I spent two months—two months at one whack in Little Rock without a day off.

Q. Now, am I correct, sir, you covered the Civil Rights Commission hearing in Montgomery which began on December 1, 1958?

A. To the best of my knowledge, I did, sir.

Q. And did that coverage necessitate your physical presence in Montgomery during that time?

A. I was there.

Q. You were there in Montgomery during the whole time?

A. I'm not sure about the whole time; I think I was there during the whole time to the best of my knowledge.

Q. Was there another—were there any other Times correspondents there too during any of that period?

A. No—there are—

Q. Let's use the period, say, from December 1, 1958, through January 29, 1959, roughly the months of December, 1958, and January '59.

Mr. Embry: Is that a question?

Mr. Nachman: Yes.

By Mr. Nachman:

Q. Were there any other New York Times correspondents other than yourself physically present in Montgomery during any of that period of time from early—

A. I think I heard one came over there the latter part of January. I'm not real sure about the dates on this.

Q. That was Russell Porter, was it not?

A. That's what I heard, yes.

Q. And he is a regular New York Times correspondent too, is he not?

A. As far as I know, yes, sir.

Q. Regularly salaried—

[fol. 1325] A. As far as I know, yes.

Q. —person. Now, what did your news gathering activities consist of while you were in Montgomery during this period?

A. Covering the hearing.

Q. That means you attended the hearings, of course?

A. Uh huh. (Indicating affirmative.)

Q. And I believe there were some other proceedings in the United States District Court in Montgomery during that time?

A. Yes, sir.

Q. And you attended those?

A. Yes, sir.

Q. There were also, I believe, some events which took place outside of Montgomery; specifically, there were some events that took place in Barbour County?

A. Yes, sir.

Q. And there some took place in the town of Clayton?
A. Yes, sir.
Q. And in the town of Union Springs?
A. Yes, sir.
Q. And you went down to those places?
A. Yes, sir.
Q. Did you go over to Wilcox County or Dallas County during that time?
A. No, sir.
Q. Did you interview any persons in Alabama, residents of Alabama, while you were there on this coverage?
A. Yes, sir.
Q. Would you state the names of some of the persons whom you interviewed?

Mr. Embry: We object to his—and direct him not to answer.

A. I decline to answer it.

Mr. Embry: There's a privilege on disclosure of the source of his information. It sheds no light on the issues made under the motion as to the identity of such persons.
Mr. Baker: For the record, we will state that the names [fol. 1326] of people from whom he has gathered news in Alabama is a material and pertinent inquiry and we think we are entitled to know it.
Mr. Embry: The question doesn't ask what he got from them?
Mr. Nachman: No, I merely asked the persons whom he interviewed and talked to while he was covering these news stories for The Times.
Mr. Embry: We withdraw that objection.
Mr. Daly: You have no objection?
The Witness: No.

Q. We're not asking you for the specific things they told you but for the names of the people you talked to.

Mr. Daly: We have no objection.

A. I talked to Sam Lemaistre down in Clayton, isn't it?
Q. Yes.
A. And talked to little George Wallace down at Clayton. Talked to Wallace's attorney, I forget his name.

Mr. Embry: I didn't know George had a lawyer.

A. And a number of other people.

Q. And I take it you interviewed the members of the Civil Rights Commission from time to time, Mr. Hanna and others?

A. Interviewed them?

Q. Either interviewed them by yourself or as a part of a—

A. I was there.

Q. —news conference.

A. I was there in the hearing room. Now, Mr.—Mr. Story was foreman at that hearing, he issued statements. I put those down. I don't recall—

Q. Do you recall that the day before the hearing began there was a press conference on a late Sunday afternoon at which the correspondents, newspaper people there, were given an opportunity to interview and ask questions of the members of the Commission who were present?

A. Now, to the best of my knowledge, and I might be wrong, but to the best of my knowledge, I don't think I was present for that news conference.

[fol. 1327] Q. I see, sir. So that your news coverage consisted of attending the various proceedings, the Commission proceedings and the court proceedings, and in interviewing people who were involved, so to speak, in the various matters considered by the Commission and by the Court?

A. Some of those involved, yes.

Q. I believe there were also photographs in some of the stories that The Times carried about these matters, were there not?

A. I don't really recall.

Q. You don't recall that. Who, on the assumption that there were such pictures—for example, on the assumption that in The New York Times on January 16, 1959, there was a picture of George Wallace walking up the steps of the Federal Court Building with his attorney. Who would have arranged for such a picture? Would you?

A. I told you—

Mr. Embry: We object—if he assumes that there was a picture, who would have arranged it—it doesn't ask for anything within the witness's knowledge unless he happens to know about this picture.

A. I think I can clear that up. I wasn't present for that hearing; of course I would have no knowledge. I remember seeing the picture in The Times. I believe I was in Florida on vacation and I saw the picture in The Times.

Q. Now, to ask the question again, I will call your attention to a story which was under your by-line, one that appeared in the January 14, 1959, issue, which carried a picture of George Wallace; do you recall that story and that picture?

A. If you had the picture.

Q. It was a story with a Clayton date line.

A. You said before—is this a different—

Q. I'm referring to a different picture. You said you were not there, you were on vacation.

A. I said to the best of my knowledge I wasn't there. I could refresh my memory on those dates if it's very important.

Q. I understand you—

[fol. 1328] A. I'm not sure because part of that time Porter was there. At least I heard he was there; I was on vacation.

Q. For that reason I'm referring to another that might refresh your memory.

A. This is a picture of Clayton?

Q. This was a picture of George Wallace which appeared in a news story with your by-line under the date of January 14, 1959, with a Clayton, Alabama date line.

A. Yes.

Q. Now, who would have arranged for that picture to have accompanied the news story?

A. It probably—

Mr. Daly: Who would have arranged for the taking of the picture?

Mr. Nachman: For the taking of the picture and transmitting of the picture.

Mr. Embry: We object, whether he—if he didn't make the arrangement, whether he knows or that there were any arrangements made. It assumes—

Mr. Daly: Off the record.

Mr. Nachman: We, of course, would like to know how The Times gets pictures from Alabama.

A. Off the record. I don't want to say anything about that picture without seeing something on it. In a thing like that, that was a long drawn out proceeding and I would rather not say. If you've got a copy of the picture, I'll be glad to tell you the best of my knowledge what I know about it.

Q. Let me ask you this way. Is it from time to time customary for you to decide that a picture should go along with a news story?

A. No.

Q. Who makes that decision?

A. It's made in New York to the best of my knowledge.

Q. How do the people in New York get the picture?

Mr. Embry: If you know.

[fol. 1329] A. Well, I think they get them from AP Wire Photo, UP Telephoto.

Q. At no time in your experience has it entered your mind you should have a picture to go along with a news story to send in to New York for publication?

A. It's possible, but I don't—I wish you had a copy of this picture and then I could tell you.

Q. Referring to the March 6 incident in Montgomery, March 6, 1960—

A. Yes.

Q. —there was a picture accompanying that story, was there not?

A. I believe there was, yes.

Q. Did you have anything to do with arranging for that picture to go in to The Times?

A. No.

Q. It did not occur to you at that time that a picture along with the story might be newsworthy and might be an event which The New York Times would want a picture with?

A. I try to avoid getting the pictures in—cuts down on the amount of space I get.

Mr. Daly: Off the record.

(Discussion off the record.)

A. Off the record again. Wasn't that an AP picture?

Q. If you don't know, that's all right. I'm not trying to pin you down on that.

A. Why—if you brought copies of the picture, we could look at it.

By Mr. Baker:

Q. You work for The Times?

A. I cover story after story year in and year out. I can't without looking at the paper, go back and tell you just exactly how many column inches we carried on a story or whose picture it was with it.

By Mr. Nachman:

Q. The question I was asking, Mr. Sitton, was, during your experience as a newspaper reporter for The New York Times have there been occasions when you were covering a news story when it occurred to you that it might be well for a picture to go along with the news story and if it did so occur to you, what arrangements if any do you make to get such pictures?

[fol. 1330] Mr. Embry: We object to that unless it refers to some occasion or incident in the State of Alabama within the period pertinent to the inquiry in this case.

Mr. Nachman: We're asking it in terms of the general practice of a general newspaper reporter for The New York Times.

A. General practice?

Mr. Nachman: And we stand on the question.

A. General practice, no.

Q. You never have done that?

A. I'm not—you said general practice.

Q. Now, I'm asking whether you have ever done it.

A. I think possibly I have on one or two occasions.

Q. What arrangements did you make on those two occasions?

A. I don't—I'm not really sure. I think once I spoke to someone about—to the AP about a—what we call a Man-in-the-News profile feature and asked them if they happened to have a file picture of the person involved and said something about I imagine—"I think we're interested; I imagine you will hear from New York on it."

Q. Do you ever, in the course of your news coverage, attempt to determine whether the AP has—or any other news service has—taken a picture of the events you're covering?

A. That's possible.

Q. And have you, during the course of your work as a reporter for The Times ever notified the New York office that there was such a picture in existence which The Times could use if it saw fit?

A. I believe, going back to this other thing, on this Man-in-the-News I did say "Yes, AP has a picture here, has a file picture, if you want to get it up on the wire."

Q. Do you recall, Mr. Sitton, whether at any time during the course of your coverage of these civil rights hearings and their aftermath, so to speak, a biographical sketch of George Wallace was run in The New York Times?

A. Yes.

Q. Did you write the biographical sketch?

[fol. 1331] A. Yes.

Q. Am I correct that the existence of such a biographical sketch of a person in the news on the particular day is an indication of the importance which The Times attaches to the particular news story?

A. You mean by—what do you mean by "importance"?

Q. I'll ask it this way and maybe I should ask it over a series of questions. This practice in The Times of running such biographical sketch is of fairly recent origin; by that I mean within the last two or three or four years, isn't that correct?

A. I really don't know.

Q. It is customary only one such biographical sketch appears—

A. Correct.

Q. —in the edition for that particular day; is that correct?

A. Correct.

Q. Am I correct that the selection of a person to appear in such a biographical sketch is an indication of the importance of that person in the news on that particular day?

A. I don't know. I guess maybe the general conclusion —possibly that could be true; but sometimes you will find a man in the news on a story that's way inside the paper, doesn't even start on the front page.

Q. Well, is it on occasion an unimportant news story?

A. Are they what, unimportant?

Q. Unimportant.

A. I consider all of our stories important.

Q. Well, relatively unimportant in terms of the other stories which appear in the paper. By the paper, I mean The Times.

A. Generally speaking, it's some—judging from reading the paper, it's based on, and generally they have, a man in the news on some person who is—figures rather relatively prominently that day.

Q. I take it—maybe I shouldn't ask this, but you read The Times regularly every day?

A. That's true. Sometimes I miss though.

Q. Do you recall whether The Times covers the swearing in of all the governors in the country or just certain—

[fol. 1332] A. The inauguration?

Q. The inauguration.

A. No, we don't.

Q. You do, however, cover the inauguration of some of the governors of the states?

A. Oh, I guess we always cover the inauguration of the Governor of New York, but I passed up a number of them down here. In fact, I've never covered an inauguration.

Q. You have read though, in the Times, stories covering the inaugurations of governors?

A. Yes.

Q. And your answer, I believe, to my earlier question was that The Times does not cover the inauguration of all of the governors?

A. That's correct.

Q. Now, on what basis does it select its governors inaugurations which it will cover?

Mr. Embry: Do you know that?

A. I have no knowledge of that.

Mr. Embry: It calls for his recitation of the knowledge and mental operations of somebody else.

Q. This is not a complicated question. Is it not the answer it considers the inauguration of some governors more important than some?

Mr. Daly: Why do you ask him? If it's so obvious, why ask the question? Mr. Sitton obviously doesn't know—

A. It's The Times—

Mr. Daly: —the answer to that.

Mr. Baker: We're entitled to an "I don't know" answer.

Q. What is your answer?

A. Repeat the question.

Q. (Question ready by the reporter.)

A. I don't know.

Q. Would you say, as a newspaperman of some statute, that the newsworthiness in terms of The Times' reading public is a criterion?

A. I certainly assume that.

[fol. 1333] Q. One would assume that?

A. Yes, sir.

Q. And when it covers the inauguration of some governors and not of others, that it considers the former more important in a newsworthy sense than the inauguration of the latter category?

A. I have no more knowledge of that than do you. I'll say I guess so.

Q. That would be a fair assumption to make, would it not, from your—based on your general knowledge?

A. That's some—that's your statement.

Q. I'm asking based on your general knowledge and experience in the newspaper business.

A. I suppose so, I suppose so.

Q. And I take it that in covering the inauguration of some of the governors, there are pictures of some of the

inaugurations and there are not pictures of others; is that correct from your reading of The Times?

A. Yes.

Q. Would it be fair to assume that when a picture covers the—accompanies the inauguration story that that means that it is even more important than those stories which—

A. Not necessarily.

Q. Not necessarily?

A. I wouldn't think so. Here again, it's a matter of opinion.

Q. I understand that.

A. There are so many factors involved here that—it's a question of what other news has happened that day and things like that. I have nothing to do with that.

Q. Now, Mr. Sitton, during the time you have been the southern correspondent for The Times, would you, to the best of your knowledge, give me the names of any other regular Times correspondents who have gone into Alabama and written news stories?

A. From my reading of The Times?

Q. Yes, from your general knowledge.

A. Well, now, I've seen by-lines in The Times—in Alabama?

[fol. 1334] Q. Yes, sir.

A. Russell Porter, Harrison Salisbury. I can't recall offhand any others.

Q. How about Wayne Phillips?

A. I heard—I believe I heard in Alabama Phillips covered the Autherine Lucy case, but I wasn't down here at the time. I don't know, but I heard that.

Q. How about Clarence Dean?

A. It's possible, but not to my knowledge, sir, no.

Q. Gladwin Hill?

A. Gladwin—possible again. You mean since I've been down here?

Q. During the time you've been familiar with The Times' operations.

A. You can—I take it—I think the Autherine Lucy event you're referring to took place in 1956.

Q. I wasn't referring to any particular events.

A. You're calling men's names—I mean, for example, of Phillips. When did the Autherine Lucy thing take place?

Q. 1956.

A. I didn't come to work for The Times until November, '58—or October, '57.

Q. That was not what my question was. What my question was was your knowledge of New York Times correspondents who have gone to Alabama and written news stories about events in Alabama?

A. My personal knowledge?

Q. Personal knowledge either gained by seeing them there or reading their material in The Times.

A. The only stories I have read that I can recall that were covered by other correspondents were those by Russell Porter and Harrison Salisbury.

Q. And you recall seeing none by Wayne Phillips or Gladwin Hill?

A. No, sir.

Q. How about George Barrett?

A. No, sir.

Q. Peter Kihss?

A. No, sir.

[fol. 1335] Q. John Popham?

A. I think possibly in the clips I've seen stories that had an Alabama date line by Popham.

Q. Edith Evans Asbury?

A. I don't recall, no, sir.

Q. Is there a man named Plenn?

A. No.

Q. Do you know a correspondent of The Times by that name?

A. No.

Q. As best you can estimate it, Mr. Sitton, how frequently have you gone into Alabama during 1960?

A. 1960?

Q. Yes.

A. Four times.

Q. How long have you stayed on those occasions?

A. Time varied. I would have to refresh my memory to give you a—give an estimate. I think the longest period I was there was during that March 6th period. Somewhere

in there. I was there, I believe, about three or four days at one time and I left and then I went back and stayed two days, I think, something like that.

Q. Were you there last week in Montgomery?

A. Last week?

Q. Last week.

Mr. Embry: For a brief moment.

A. Yes.

Q. Specifically on Saturday, the 28th of May?

A. No.

Q. What day were you there?

A. Friday.

Q. The 27th of May?

A. Yes.

Q. What was the purpose of that trip?

A. Cover the King trial.

Q. Gather news for The Times, you're referring to the King trial?

[fol. 1336] A. Correct.

Q. By the King trial, you're referring to the Martin Luther King trial in Montgomery?

A. That's correct.

Q. What did your news covering activities consist of on that visit?

A. I didn't do anything.

Q. Did you attend the trial?

A. No, sir.

Q. You came to Montgomery and did nothing?

A. That's correct.

Q. Was that the purpose of your coming to Montgomery, to do nothing?

A. No, sir.

Q. What made you decide to do nothing?

Mr. Embry: We object to that, mental operation of the witness.

Q. Go ahead, sir.

A. What was that, sir?

Q. What made you decide to do nothing?

Mr. Embry: If anything made you decide to do nothing, tell them.

A. Well, I was advised that it might be best for me to come back to Atlanta.

Q. Who so advised you?

A. Mr. McLeod.

Q. Who is he?

A. Mr. McLeod.

Mr. Embry: Roderick M. McLeod, Jr., one of my law partners.

Q. Do you customarily confer with lawyers when you go into Alabama to write a news story?

Mr. Embry: We object to that.

Mr. Daly: You didn't get service, you were attempting to serve him down there, you people were or someone was.

Q. Do you adopt the statement of your counsel?

[fol. 1337] A. I'll say this. I understood that an attempt would be made to serve me and I thought it best that I get in touch with Mr. McLeod.

Q. And he instructed you to leave?

A. That's correct—no, he advised me to leave, he didn't instruct me.

Mr. Embry: You did leave.

A. I left. He advised me, but he didn't instruct me.

Q. In 1959, to the best of your knowledge how frequently did you come into Alabama to cover news events?

A. Oh, rough approximation, I would say ten or twelve times.

Q. And over how long a period of time would those occasions extend? I realize they may vary.

A. I imagine the longest period was on that Civil Rights Commission thing; I don't really recall. I would guess a week. That's a rough guess.

Q. Did—the longest period of time on any one of those ten occasions was a week?

A. I think so. It might have been longer, it might have been ten days. But without refreshing my memory, I would say a week, possibly ten days.

Q. How about 1958? I realize that your recollections may be dim.

A. I think I was there about two times, I think. I'm not sure; about twice, I think.

Q. How about 1957?

A. Well, I didn't—no, I wasn't down here then.

Q. And in '56 you weren't here then?

A. No.

Q. When did you begin your duties as southern correspondent for The Times, the date in 1957?

A. May—no, May, 1958, I began my duties as southern correspondent. I came to work for The Times in October, 1957.

Q. I see. You were not down here at all in 1957?

A. No, I was in New York.

Q. Am I correct that Mr. Popham had your—

A. That's correct.

[fol. 1338] Q. —job, so to speak, before you took it over?

A. Yes.

Q. Mr. Popham is now in Chattanooga?

A. General managing editor of the Chattanooga Times, yes.

Mr. Daly: He's not employed by The New York Times?

The Witness: No.

Q. I take it that you submitted expense accounts for each one of these trips into Alabama?

A. Yes, sir.

Q. And they were all paid?

A. Yes, sir.

Q. Whom do you submit your expense accounts to when you—

A. The auditing department.

Q. Just generally the auditing department or any particular person in the auditing department?

A. Well, it's changed; I don't remember the other fellow's name. Harold C. Neuhut.

Q. You send them directly to him or address them to the auditing department?

A. Address them to him—Mr. Harold C. Neuhut, Auditing Department, 8th Floor, New York Times, and so forth.

Q. Have you conferred with anybody else in Alabama other than Don McKee about being a string correspondent for The Times? By anybody else in Alabama, I mean any other residents in Alabama.

A. You mean asked them if they would be a stringer?

Q. A conversation of similar import to the one you had with McKee.

A. I think I asked Bill McDonald something about a question of a stringer; he had once been a stringer.

Q. Something about a string—you mean about—

A. About—

Q. —about the names of people?

A. I might have asked Bill—it's quite possible I asked Bill if he had any ideas or something like that.

Q. Do you happen to know how many string correspon-
[fol. 1339] dents there are resident in Alabama?

A. Only from your questions. I know—I knew of the existence of one stringer in Birmingham, whom I don't know; I never met—never talked to him. Of course I knew about McKee. And then you mentioned one in Mobile; he has never been mentioned to me by anyone before.

Mr. Daly: You're assuming, then, he's a—

The Witness: I say from what he said, he said.

Q. I wasn't asking you to relate what my statements—

A. I'm pointing out you said he was a stringer and I assume you're an honest man. So I'm taking your word for it; I guess we've got a stringer in Mobile.

Mr. Daly: In other words, you don't know?

A. I don't know. I've never talked to him. I've never even heard of him. I didn't know we had a stringer in Mobile.

Q. Did you know you had one in Birmingham?

A. Yes; but I didn't know him; I never have talked to him.

Q. You have never had any conversation with the stringer in Birmingham?

A. No, no dealings whatsoever.

Q. I take it, then, it's fair to assume that the existence of stringers in Alabama is not important to you in your work?

A. No, it's not really part of my work.

Q. In other words, when you want an Alabama news story, you go in there yourself and get it?

A. Sure. If I'm going to cover a story, yes, I go in and cover it myself.

Q. You don't rely on a stringer?

A. No. I call McKee from time to time.

Q. Approximately how often do you call him?

A. Very seldom.

Q. Could you give us some sort of estimate? I realize it would be imprecise.

A. To ask him for information.

Mr. Embry: During what period? We object unless you limit it to the period of time—

[fol. 1340] Q. Since McKee has been a string correspondent for The Times. I believe you stated you talked to him about it either in late '58 or early '59.

A. Oh, roughly, I guess I've called Don, I don't know, five or six times, something like that.

Q. About the coverage of news events in Alabama, or about the occurrence of news events?

A. Well, sometimes—I think once—I believe I called him last week and asked him how long he thought the King trial would go on and what the outlook was, just talked about it generally with him.

Q. In other words, he helps you keep up with news events in Alabama; isn't that correct?

A. No.

Mr. Embry: We object to that.

Q. You don't rely on him at all to keep up with news events in Alabama?

A. I mean he's a friend of mine, you know. I call people on other papers who are not stringers, people I'm friendly with. I consider him more of a friend than a stringer. Take Birmingham; for example, if I want to know something in Birmingham, I don't call—what's that fellow's name—Chadwick? I've never called Chadwick, I call the people on the newspapers over there.

Q. You frequently, then, make calls into Alabama?

A. Not too frequently, no. You asked me before about how Alabama stood as a news state and I said it hadn't been overly newsworthy since I've been down here. There have been some occurrences over there we have covered but many more in Little Rock, Florida, Georgia, Virginia.

Q. Many more?

A. Many more. Particularly Arkansas. My goodness!

Q. Leaving out Arkansas during the period of the school situation there, have there been many more than the other states?

A. What do you mean by many?

Q. It was your phrase—

A. I would say more, I would say more.

Q. —I want to know what you meant by it. You would say what?

[fol. 1341] A. I would say more, yes, to the best of my knowledge.

Q. In which states would you say there have been more?

A. Arkansas.

Q. You're referring to Arkansas during the school crisis there when the troops were in and so on?

A. No, I wasn't there when the troops went in; that was in '57.

Q. Well, you mentioned Arkansas then?

A. Yes, sir.

Q. During the school situation?

A. That's correct.

Q. Including the Federal court hearings and so forth?

A. Yes.

Q. What other state has had more news events than Alabama during this period?

A. I spent much more time in Louisiana than I have in Alabama.

Q. Any other state?

A. I don't know. There we get down on a level, I guess they all run about—about the same—Alabama, Georgia, Florida.

Q. Of course, Georgia is where you have your principal office?

A. Yes, but that's—doesn't mean I give Georgia any more coverage than any other state just because I'm here.

Q. I take it it's a convenient geographical location?

A. Good transportation, communication, and that sort of thing.

Q. Who pays for these telephone calls into Alabama, do you charge them to The Times?

A. Yes, sir.

Q. Do you have anything to do with obtaining subscribers to The Times?

A. No, sir.

Q. Do you know anything about The Times microfilm edition, how its sold?

A. No, sir.

Q. Do you know whether that's handled directly with representatives from New York?

A. I don't really know.

[fol. 1342] Q. You don't know anything about that. Now, in addition to writing spot news stories, so to speak, you also write news analyses, don't you, for the Sunday editorial supplement of The Times?

A. Yes.

Q. Nes of the Week?

A. News of the Week in Review.

Q. News of the Week in Review?

A. Yes.

Q. And you have written such analyses which have covered Alabama, have you not?

A. Covered only Alabama?

Q. No, not only Alabama, but Alabama.

A. Written them on the South.

Q. Which have included Alabama?

A. Sure.

Q. Have you ever written any on Alabma exclusively?

A. I don't recall that I have, no.

Q. Do you recall one on January 18, 1959, which related to the Civil Rights Commission hearings?

A. Do you have a copy of it?

Mr. Embry: This is the News of the Week in Review?

Mr. Nachman: Yes, Section Roman IV.

A. Was this along piece, what was it?

Q. I asked you whether you recall writing one which appeared in the January 18—

A. If you've got a copy, I'll be glad to tell you whether I wrote it or not. Offhand—I can go back to the files and check and give you a yes or no on it.

Q. Your testimony is you don't recall whether you did or not?

A. As far as I know, I don't recall. I did—I think I did one that didn't make the paper, but it was on—I think that was on the South as a whole.

Mr. Nachman: We have no further questions.

[fol. 1343] Examination by Mr. Embry:

Q. Your expense accounts which you have been asked about and which I assume have been paid for the period he has spoken of on the occasions you have testified about on which you went into the State of Alabama on the occasions you have told us about, from where do you submit those pieces of paper reflecting your expenses to New York for payment by them to you?

A. Where do I usually make them up?

Q. Yes.

A. I usually make them out after I get back home.

Q. Here in Atlanta?

A. Here in Atlanta, yes, sir.

Q. Have you ever resided in the State of Alabama?

A. Yes, sir.

Q. When?

A. From March of 1950 until December 31, 1950.

Q. Since December 31, 1950, have you ever had a residence in Alabama?

A. No, sir.

Q. Since the May—July, 1958, have you been a resident of the City of Atlanta, since July, 1958?

A. Yes. Of course I actually moved my family down here in July, 1958. I think I used my mother-in-law's mailing address here in Atlanta since May of '58. I was moving around, there was so much happening at that time, I didn't stay anywhere.

Q. When did you take up residence in Atlanta on a permanent basis?

A. July, 1958.

Q. Since that time have you continuously—

A. Yes, sir.
Q. —maintained your home and resided in Atlanta?
A. Yes, sir.

Mr. Embry: No further questions.

[fol. 1344] Re-examination by Mr. Nachman:

Q. When you have gone to Montgomery on these trips you have described, where do you generally stop?
A. Jefferson Davis.
Q. You stayed there on all those occasions in Montgomery?
A. Yes, sir.
Q. And I take it when you went to Clayton and Union Springs, you used Montgomery as your base of operation, so to speak?
A. Yes, I stayed—stayed at some motel in a town near Clayton one night and the rest of the time, at the Jefferson Davis.

The witness THOMAS M. HURLEY, being first duly sworn, testified as follows:

Examination by Mr. Nachman:

Q. Would you state your name for the record, Mr. Hurley?
A. Thomas M. Hurley.
Q. Where do you live, Mr. Hurley?
A. Atlanta, Georgia.
Q. Are you employed by The New York Times?
A. No, sir.
Q. Do you have any relationship or business connections with The New York Times?
A. I'm employed by New York Times Sales, Inc.
Q. New York Times Sales, Inc.?
A. That's right, sir.
Q. And that's a separate corporation from The New York Times?
A. To the best of my knowledge, it is.
Q. I don't suppose you know who owns the stock of New York Times Sales, Inc.?

[fol. 1345] A. No, sir.

Q. What are your duties with The New York Times Sales, Inc.?

A. I'm the manager of the Atlanta office of the New York Times Sales, Inc.

Q. Do you happen to know, limiting it to the southern region of the country, whether or not the New York Times Sales has other offices, if any?

A. I really don't know that.

Q. Do they have an office in Alabama in Birmingham?

A. No, sir.

Q. Do you have any employees in Birmingham?

A. No, sir.

Q. Do you know whether they have offices in any of the southern states other than Georgia?

A. There is an office in Miami, but I wouldn't know how the thing is set up.

Q. Now, in a general way, what are your duties?

A. I solicit advertising.

Q. Throughout the country or just in certain states?

A. No, sir, in the South.

Q. Is Alabama included?

A. Yes, sir.

Q. And do you go into those states and solicit advertising?

A. Yes, sir, that's right.

Q. And you go into Alabama and solicit advertising?

A. That's right.

Q. Do you solicit advertising for publications generally or just for The New York Times?

A. Just for The New York Times.

Q. And for no other publications?

A. No, sir.

Q. Do you know whether the New York Sales, Inc.—or the New York Times Sales, Inc., anywhere in the United States solicits advertising for any publications other than The New York Times?

[fol. 1346] A. I don't know.

Q. You know of no reason why the policies differ with regard to your area than it is elsewhere in the country?

A. Well, in one other city, they have a publisher's representative who is not connected at all with New York Times Sales, Inc. That's Detroit.

Q. Who is that publisher's representative?

A. Sawyer, Ferguson and Walker.

Q. Sawyer, Ferguson and Walker also solicit advertising for The New York Times and other publications?

A. In Detroit.

Q. In Detroit?

A. Yes, sir.

Q. And nowhere else?

A. That's right.

Q. How long have you been employed in this capacity, Mr. Hurley?

A. I went to work with New York Times Sales, Inc., on June 8, 1959.

Q. So just about a year then?

A. That's right.

Q. During that period of time—before I ask that, strike that, please ma'am—would you outline in a general way how you go about soliciting an ad for The New York Times and include in that how the ad, after it's contracted for, is made up and sent in to The Times and so on, the general procedure whereby an ad gets an ad to the paper?

A. Generally speaking, I, and other salesmen like me, call on the advertisers and advertising agencies. And again generally speaking, the advertiser places advertising in a publication through an advertising agency and the order contract for such advertising goes from the advertising agency to the publication.

Q. Where is the ad made up, in New York or—

A. The actual ad is made up by the advertising agency for the advertiser and it comes into New York in a plate or mat form.

Q. And the mat is made up outside of New York?

A. The original mat.

[fol. 1347] Mr. Daly: Well, it assumes that it's made up outside of New York. It would depend on where the advertising agency is that makes it up.

A. It could be.

Mr. Embry: What we mean is if it's an advertising agency outside of New York.

Mr. Daly: It would probably be more up to—made up outside so that was the objection to the question.

Q. Have you, during the period of time you have worked for this company, solicited advertising in Alabama?

A. Yes.

Q. Would you state how a particular ad that you select, any one at random you have solicited successfully, how—trace the procedure from the time you solicit the ad until the time it gets to The New York Times? As I say, select any one as an example, just a typical example.

A. Well, the Birmingham Committee of One Hundred, for example, the ad is made up by the Sparrow Advertising Agency.

Q. In Birmingham?

A. That's right.

Q. In other words, you solicit the Committee of One Hundred?

A. And the agency.

Q. And the agency?

A. The agency is the one in most cases—they will make up the schedule and decide on which publication the ad will go into subject to the approval of the advertiser.

Q. Do you go first to a representative, let's say, of the Committee of One Hundred, whoever has authority to place advertising for this committee?

A. Not necessarily. I might go to the agency first. In this particular case, I didn't see anybody on the Committee of One Hundred for this purpose.

Q. You go to the agency, Sparrow, and you speak to the agency—

Mr. Embry: Just a minute. You nodded in the affirmative. Let me instruct you, Mr. Hurley, she is having to [fol. 1348] look at what she's writing and you will have to actually give an answer rather than nod so the record will show what the answer was.

Q. You go call on the agency?

A. I go to both.

Q. You go to both. Sometimes you go directly to the advertiser?

A. That's right.

Q. Let's take that as an example. You go directly to the advertiser and, I take it, discuss that person's advertising in The Times?

A. That's right.

Q. Then on the assumption that you work out some sort of agreement about it, how is the agreement formalized?

Mr. Embry: We object to "on the assumption;" it assumes facts.

Q. Let's assume that after such a conversation the advertiser agrees with you he should place an ad in The New York Times. What is the procedure from that point on? Do you make any sort of a contract with him?

A. I personally don't, no.

Q. Does New York Sales, Inc.?

A. I wouldn't know. The order and contract is sent from the agency to New York; it's accepted or rejected.

Q. After you have talked to such a person and it has been decided that this person will place an ad in The Times, what is your next procedure?

A. Well, if they have agreed to put an ad in The Times, I don't do anything else.

Q. Do you notify anybody or does the advertiser notify anybody that such a decision has been made?

A. I report my activities to the New York office.

Q. In the course of your activities, do you agree with the advertiser on the amount of space he will take?

A. He plans a certain schedule; it might be one ad or might be one a month for six months or something like that.

Q. Does he work out with you that plan?

A. Yes, in some cases.

[fol. 1349] Q. And, I take it, discusses whether it will be one ad or a series of ads?

A. That's right.

Q. And if a series of ads, at what intervals?

A. That's right.

Q. And over what period of time?

A. That's right.

Q. And do you also discuss whether it will go in a daily issue of The Times or a Sunday issue?

A. Yes, sir.

Q. And if the daily issue, which day?

A. Correct.

Q. And do you discuss the amount of space it will occupy?

A. That's right.

Q. And I take it some ads are—maybe I'm incorrect about this—are some ads more expensive than others in terms of their format—that is, is an ad with a drawing or illustration more expensive than an ad with just words in it?

A. No, sir.

Q. That doesn't make any difference?

A. No, sir.

Q. Do you have any discussion about the format of the ad that will go in?

A. No, sir.

Q. That's left to someone other than yourself?

A. I just sell the space only. I have nothing to do with the makeup or the content of the ad.

Q. Do you have with you any display samples or display materials which you show the prospective advertiser?

A. With me now?

Q. Not now; when you go on a trip to visit—

A. Yes, sir.

Q. —and you show him various ideas for ads?

A. No, I don't show him ads. I might on some occasion, [fol. 1350] depending on what we're trying to do. Mostly, I discuss the—why an advertiser should be in the New York Times, or why I think he should be, in terms of what—the people they want to reach.

Q. I take it you have some familiarity with his business or his endeavor so that you can—

A. That's right.

Q. —explain to him why you think it's important for him to advertise in The Times?

A. That's right.

Q. Do you have any sort of statistics to discuss with him as to the advantages of advertising?

A. Yes, sir.

Q. Mr. Hurley, since you've had this employment with The New York Times Sales, Inc., approximately how many ads have you solicited from the State of Alabama—for the state of Alabama, I mean from persons or firms or corporations or the State itself or any municipality or county.

A. Well, as far as number of ads that went in the paper, sometimes an ad gets in the paper that I don't solicit. It's like we call "over the transom". Somebody wants to place an ad and it goes in direct, or an agency I might not even know about.

Q. I mean you yourself have solicited in the manner you have described?

A. I would say maybe three or four.

Q. Three or four during this year. Did you solicit—

Mr. Embry: You mean a year from '59?

Q. From June 8, 1959, up to the present time, approximately a year. Were you involved in the solicitation of an ad for the State of Alabama during this time?

A. Yes, sir.

Q. I believe that sold for around $5,200.00, did it not?

A. No, it was less than that.

Q. Do you recall how much it was?

A. Not specifically, no.

Q. Was it a great deal less? By that, I mean more than a thousand dollars less than $5,200.00?

[fol. 1351] A. Yes, it was less than 5,000.

Q. Was it less than 3,000?

A. No.

Q. More than three and less than five. Do you call on corporations with regard to advertising in the financial section of The Times?

A. Yes, sir.

Q. And do you solicit advertisements there for declaration of dividends—

A. Yes, sir.

Q. —stockholders' meetings and that kind of thing? Does a Mr. Robert Sullivan have any connection with your process?

A. When he's—when he's in the area, he's under my direction actually.

Q. By whom is he employed?

A. I presume he's employed by The New York Times.

Q. As distinguished from the New York Times Sales, Inc.?

A. Yes.

Q. Does he also come into Alabama?

A. He has been in Alabama once since—

Q. Since your tenure?

A. That's right.

Q. Do you happen to know what the purpose of that visit was and what he did while he was on that visit?

A. Yes, sir. He was in Mobile, Montgomery and Birmingham.

Q. Soliciting advertisements?

A. That's right.

Q. He called on persons there?

A. That's right.

Q. Do you happen to know the approximate dates of that trip?

A. The latter part of October, 1959.

Q. What is the contractual relationship, if any, between New York Times Sales, Inc., and the Sparrow Advertising Agency in Birmingham, if you know?

A. What is the what, sir?

Q. Is there any contractural relationship or business relationship between the New York Times Sales and Sparrow Advertising Agency in Birmingham?

[fol. 1352] A. It's just another advertising agency that New York Times Sales, Inc. calls on.

Q. I see. In other words what you do, if I'm correct, is to call on advertisers and also call on advertising agencies?

A. That's right.

Q. And the purpose of calling on advertising agencies, I take it, is to urge them to get their clients to advertise in The New York Times?

A. That's right.

Q. I take it that your expenses on these trips are paid by The New York Times Sales, Inc.?

A. That's right.

Q. And do you submit a regular form expense account?

A. Yes.

Q. Their main offices are in New York City?

A. Yes.

Q. Do you recall seeing, within the last two weeks, an ad for the City of Decatur, Alabama?

A. I saw an ad from Decatur on the Housing Authority.

Q. Yes. Were you instrumental in obtaining that ad?

A. No, sir.

Q. Do you happen to know how that was obtained?

A. No, sir.

Q. I may have covered this earlier, Mr. Hurley, but if you don't mind my being repetitive, do you know what the relationship is, the business relationship, between The New York Times Company and the New York Times Sales, Inc.?

A. Not really, no, sir.

Q. But I believe you did testify, didn't you, that the New York Times Sales, Inc., obtains advertisements solely for The New York Times?

A. In my case.

Mr. Daly: You mean by obtain, solicit?

Q. It doesn't solicit advertising for any other publication than The New York Times?

[fol. 1353] A. No, sir.

Mr. Embry: As far as you know?

A. As far as I know.

Q. As far as you know, it doesn't?

A. From my own operation here, I don't.

Q. You don't. And there is nobody else in this area who does; that is, nobody else connected with The New York Times Sales, Inc., employed?

A. I have an assistant and a secretary here in Atlanta.

Q. And their procedure is as yours, namely, to solicit for nobody other than The New York Times?

A. That's right.

Q. So it would be fair to say, then, when you go into Alabama to solicit advertising, you solicit advertising only for The New York Times; is that correct?

A. That's correct.

Mr. Nachman: I believe that's all.

Examination by Mr. Embry:

Q. Since June 8, 1959, if I understand you correctly—and the reason I'm asking is so I'll be sure I understand you—you have been into the State of Alabama on two occasions; is that right?

A. Personally, I have been. And my assistant twice. There have been four trips from this office.

Q. Four separate occasions when any representative of

the New York Times Sales, Inc., solicited advertising within the State of Alabama?

A. Yes.

Q. Since June 8, 1959?

A. If you include Mr. Sullivan's trip, it would be five.

Q. Five different occasions in the year?

A. Well, just a minute now, sir. The office was opened on July 1.

Q. All right, since July 1, 1959?

A. Those two trips by me and two by my assistant and one by Mr. Sullivan.

[fol. 1354] Q. Have you ever at any time, or has anyone in your office on those occasions you have just testified about, ever made a contract or accepted an order for advertising when you were there soliciting advertising in behalf of your employer, the New York Times Sales, Inc., to be placed in The New York Times?

A. No, sir.

Q. From what place do you submit your expense accounts that you have testified about to your employer, The New York Times Sales, Inc.?

A. From what place?

Q. Where do you make them up and send them to New York from?

A. Atlanta.

Q. Atlanta, Georgia?

A. That's right.

Q. Do you reside in the City of Atlanta, Georgia?

A. I do.

Q. How long have you resided continuously in the City of Atlanta, Georgia, maintained your residence here?

A. Since about—

Q. From and prior to, the present day, June 3, 1960, back how far?

A. Until December, 1950.

Q. 1950?

A. Yes, sir.

Q. Have you ever been a resident of the State of Alabama?

A. No, sir.

Mr. Embry: Thank you.

Examination by Mr. Gray:

Q. Mr. Hurley, have you or anyone from your office ever solicited any ads from Reverend Ralph D. Abernathy, one of the defendants in this case?

A. No, sir.

Q. Have you or any person in your office ever solicited any advertisement from Reverend Fred L. Shuttlesworth, one of the defendants in this case?

[fol. 1355] A. No, sir.

Q. The same question with a Reverend S. S. Seay, Sr.?

A. No, sir.

Q. The same question with Reverend J. E. Lowery?

A. No, sir.

Q. Will you tell us whether or not either of those named defendants have approached you or anyone in your office to secure space for any type of advertisement to be carried in The New York Times?

A. No, sir.

Q. Do you have any personal knowledge as to how the ad which appeared on Page 25 of The New York Times of March 29, 1960, how it was obtained?

A. No, sir.

Q. Or who obtained it?

A. No, sir.

Mr. Gray: That's all.

Reexamination by Mr. Nachman:

Q. Just a couple of more questions, Mr. Hurley. You say you went into Alabama, you and your assistant, on four occasions—you twice and he twice?

A. That's right.

Q. How long a period of time were you or your assistant in Alabama on those occasions?

A. In my case, I was two days one time and five days another; and in his case, he was one day on one occasion and two days on another.

Q. Do you happen to know how long Mr. Sullivan was in Alabama?

A. I would say around probably a little over a week.

Q. What is the name of your assistant?

A. Mr. Frank Monger.

Q. Now, who, exactly, is Mr. Sullivan in terms of his relationship with the New York Times Sales, Inc.?

A. Who is he?

[fol. 1356] Q. Yes, what relationship does he have with the New York Times Sales, Inc., or The New York Times?

A. He's an advertising representative.

Q. Of the paper?

A. That's right.

Q. And he's employed by the paper itself?

A. I really don't know; I think he is.

Mr. Nachman: Thats all.

CERTIFICATE

Georgia:
Fulton County:

I hereby certify that the foregoing depositions were taken down as stated in the caption, that the witnesses were first duly sworn by me, that the questions and the answers thereto were reduced to writing by me; that the foregoing 75 pages represent a true and correct transcript of the evidence given by said witnesses upon said hearing; and I further certify that I am not of kin or counsel to the parties to the case, am not in the regular employ of counsel for any of said parties, nor am I in anywise interested in the result of said case.

This 10th day of June, 1960.

/s/ BURMA DENNY
Burma Denny,
Commissioner
Fulton Superior Court

Notary Public, Georgia State at Large.
My Commission Expires Aug. 3, 1963.

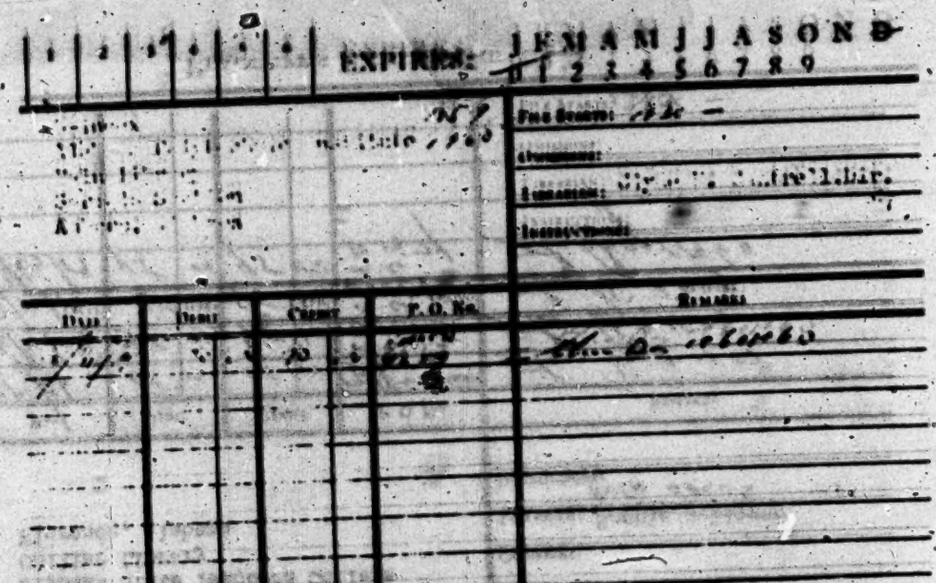
(THE ATTACHED CLIPPING IS PASTED IN BACK OF DEPOSITION)

THE NEW YORK TIMES,
SUNDAY APRIL 10, 1960 Page 50

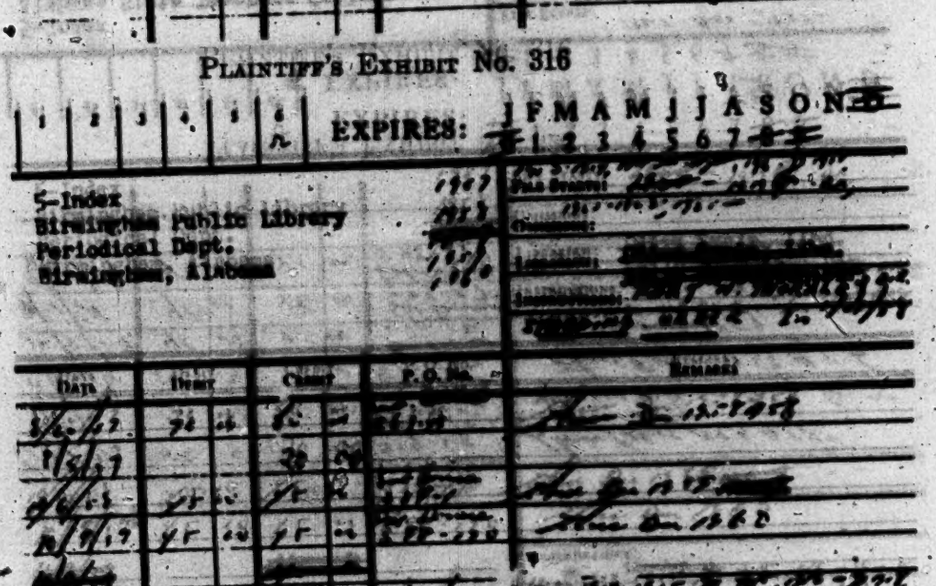
[fol. 1357]

ALABAMA FORMING RACE-RIOT POSSES

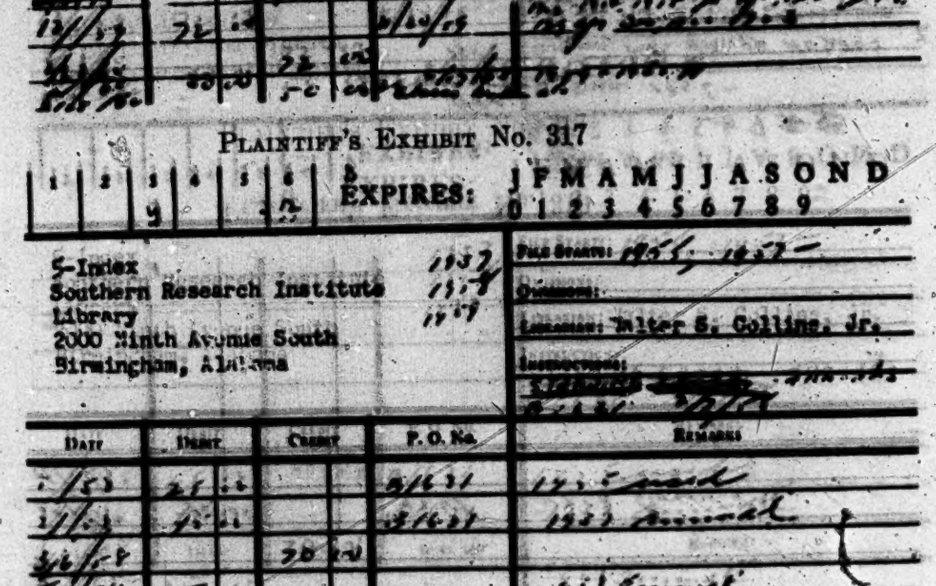
Omitted. Printed at side folios 1065-1067, pages 1657-1659, ante.



PLAINTIFF'S EXHIBIT No. 316



PLAINTIFF'S EXHIBIT No. 317



PLAINTIFF'S EXHIBIT No. 318

[fol. 1359]

1913

1	2	3	4	5	6	EXPIRES:	J F M A M J J A S O N D 0 1 2 3 4 5 6 7 8 9

5-Index
Howard College
Harwell G. Davis Library
Birmingham, Alabama

FILE STARTS: 1955
DIVISIONS:
LIBRARIAN: [illegible] William Holmbold 57
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
10/16	45 00		7264	1955 Comm'l.
11/1/?		45 00		

PLAINTIFF'S EXHIBIT No. 319

1	2	3	4	5	6	EXPIRES:	J F M A M J J A S O N D 1 2 3 4 5 6 7 8 9

5-Index
Birmingham-Southern College
A. Paul Phillips Library
Birmingham, Alabama

1954
1955
1956

FILE STARTS: 1956-
DIVISIONS: Mrs. Martha Hughes .2
LIBRARIAN: [illegible]
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
7/6/56	60 00	50 00	[illegible]	[illegible]
9/8/56	50 00	45 00	[illegible]	[illegible]
10/24/56	50 00	[illegible]	[illegible]	[illegible]
10/24/57	45 00	45 00	[illegible]	[illegible]
8/5/58	45 00	45 00	[illegible]	[illegible]
8/24/59	45 00	45 00	[illegible]	[illegible]

PLAINTIFF'S EXHIBIT No. 320

1	2	3	4	5	6	EXPIRES:	J F M A M J J A S O N D 1 2 3 4 5 6 7 8 9

5-Index
Alabama State Teachers College
Collier Library
Florence, Alabama

FILE STARTS: 1954-Aug. 1957-
DIVISIONS:
LIBRARIAN: Sophie Culbreth
INSTRUCTIONS: Ruth Odom 57

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
6/14/57	45 00	45 00	[illegible]	[illegible]
7/24/57	45 00	45 00	[illegible]	[illegible]
8/15/58	45 00	45 00	[illegible]	[illegible]

1360

PLAINTIFF'S EXHIBIT No. 321

1914
[fol. 1360]

1	2	3	4	5	6

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
U.S. Army Aviation School
Librarian
Bldg. 5313
Fort Rucker, Alabama

Date	Debit	Credit	P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 322

1	2	3	4	5	6

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
Judson College
Carnegie Library
Marion, Alabama

Date	Debit	Credit	P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 323

1	2	3	4	5	6

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
Air War College Branch Library
Maxwell Air Force Base
Alabama

Date	Debit	Credit	P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 324

[fol. 1361]

1915

1361

EXPIRES: J F M A M J J A S O N D

C-Index
Mobile Public Library
Reference Department
701 Government Street
Mobile 21, Alabama

Publication Status: Ref -
Comments:
Librarian: Joe Templeton, Director
Instructions:

Date	Debit		Credit		P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 325

EXPIRES: J F M A M J J A S O N D

C-Index
Mobile Public Library
Reference Department
701 Government Street
Mobile 21, Alabama

Publication Status:
Comments:
Librarian: Joe Templeton, Dir.
Instructions:

Date	Debit		Credit		P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 325

EXPIRES: J F M A M J J A S O N D

C-Index
Spring Hill College
The Thomas Byrne Memorial Library
Attn: Miss Marie I. Joubert, Libn.
Spring Hill, Mobile Co., Alabama

Publication Status: 1956 -
Comments:
Librarian: Marie I. Joubert
Instructions:

Date	Debit		Credit		P.O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 326

1916
[fol. 1362]

1362

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
Alabama College
Library
Montevallo, Alabama

NEW CARD MADE 11/60

Miss Abi Russell

Date	Debit	Credit	P. O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 327

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
Alabama College
Library
Montevallo, Alabama

Abi Russell 57

Date	Debit	Credit	P. O. No.	Remarks

PLAINTIFF'S EXHIBIT No. 327

EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

5-Index
The Alabama State College
The George E. Trenholm Memorial Library
Montgomery, Alabama

Miss Lula L. Brown

Date	Debit	Credit	P. O. No.	Remarks

1363

PLAINTIFF'S EXHIBIT No. 328

[fol. 1363]

1917

1	2	3	4	5	6	EXPIRES: J F M A M J J A S O N D
						1 2 3 4 5 6 7 8 9

5-Index 1955
University of Alabama 1956
Business Library 1957
Box 2037 2337
University, Alabama 1958
1959

File Status: 1956 —
Questions:
Librarian: Alice Kingery
Instructions:
Return 4/15/58

Date	Debit		Credit		P. O. No.	Remarks
11/19/55	50	00	50	00	[illegible]	Thru Dec 1956 [illegible]
12/13/56	50	00	50	00	[illegible]	thru Dec 1957 [illegible]
1/3/57	70	00	70	00	[illegible]	thru Dec 1958
12/15/58	71	00	70	00	[illegible]	thru Dec 1959 [illegible]
1/6/60	70	00	70	00	[illegible]	thru Dec 1960

PLAINTIFF'S EXHIBIT No. 329

1	2	3	4	5	6	EXPIRES: J F M A M J J A S O N D
						1 2 3 4 5 6 7 8 9

5-Index 1953
University of Alabama 1954
Main Library 1955
University, Alabama 1956
1957
1958
1960

File Status: [illegible]
Questions:
Librarian: Vivien W. Lawson
Instructions:

Date	Debit		Credit		P. O. No.	Remarks
11/27/53	50	00	50	00	[illegible]	Thru Dec 1954
12/29/54	50	00	50	00	[illegible]	thru Dec 1955
3/20/56	50	00	50	00	[illegible]	thru Dec 1956
12/10/56	50	00	50	00	[illegible]	thru Dec 1957
11/25/57	70	00	70	00	[illegible]	thru Dec 1958
12/11/58	70	00	70	00	[illegible]	thru Dec 1959
12/[illegible]/59	70	00	70	00	[illegible]	thru Dec 1960

PLAINTIFF'S EXHIBIT No. 330

1	2	3	4	5	6	EXPIRES: J F M A M J J A S O N D
						1 2 3 4 5 6 7 8 9

5-Index 1956
Tuskegee Institute
Hollis Burke Frissell Library 1957
Tuskegee Institute, Alabama 1958

File Status: [illegible]
Questions:
Librarian: M.D.Sprague
Instructions:

Date	Debit		Credit		P. O. No.	Remarks
11/20/56	50	00	50	00	[illegible]	thru Dec 1957
4/30/57			yr	00		Payment Received
3/12/57			yr	00	To Circ	County Circle - Jan 31
4/10/57	yr	00	yr	00	[illegible]	thru Dec 1958 (1959)
3/1/59	25	00			[illegible]	letter
9/1/59			25	00		
12/5/59	yr	00	yr	00	[illegible]	(1960) thru Dec 1960

PLAINTIFF'S EXHIBIT No. 331

1364

1918
[fol. 1364]

1	2	3	4	5	6	EXPIRES:	J F M A M J J A S O N D
		2					0 1 2 3 4 5 6 7 8 9

5-Index
Talladega College
Savery Library
302 W. Battle Street
Talladega, Alabama

1957
1958
1959

FILE STARTS: [illegible]

CHANGES:

LIBRARIAN: Margaret H. Scott

INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
[illegible]	[illegible]		[illegible]	1958 Annual
[illegible]		[illegible]		
[illegible]	[illegible]		[illegible]	1958 Annual
[illegible]		[illegible]		

PLAINTIFF'S EXHIBIT No. 332

1	2	3	4	5	6	EXPIRES:	J F M A M J J A S O N D
							1 2 3 4 5 6 7 8 9

5-Index
Huntingdon College
Houghton Memorial Library
Montgomery, Alabama

1955
1956
1957
1958
1959

FILE STARTS: 1918

CHANGES:

LIBRARIAN: Willa M. Hayesworth

INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]		[illegible]		

PLAINTIFF'S EXHIBIT No. 333

[fol. 1365]

1365

1919

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

S-Microfilm
University of Alabama
Library
University, Alabama

File Status:
Ownership:
Librarian: "Union", Lawson
Instructions:

Date	Debit	Credit	P. O. No.	Remarks
11/6/57	140 00	140 00	59403	Jan 1958
4/2/58	68 00	140 00	59840	Jan 1958
2/11/59	140 00		60767	Jan 1959
5/18/59		140 00		
11/16/59	140 00		61476	Jan 1960
3/4/60		140 00		
11/14/60	140 00	140 00	62454	Jan 1961
11/13/61	140 00	140 00	63103	Jan 1962

PLAINTIFF'S EXHIBIT No. 334

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

S-Microfilm
Tuskegee Institute
Hollis Burke Frissell Library
Tuskegee Institute, Alabama

File Status:
Ownership:
Librarian: DORIS Y. WILLIAMS
Instructions:

Date	Debit	Credit	P. O. No.	Remarks
11/57	146 00		59704	Jan 1958 - Jan 1959
3/25/58		146 00		
11/10/59	140 00		61476	Jan 1960
3/4/60		140 00		
	520 00		63773	Jan 1961

PLAINTIFF'S EXHIBIT No. 335

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
0 1 2 3 4 5 6 7 8 9

S-Microfilm
Talladega College
Savery Library
Talladega, Alabama

File Status:
Ownership:
Librarian: Margaret L. Scott 57
Instructions:

Date	Debit	Credit	P. O. No.	Remarks
11/21/57	140 00	140 00	59403	Jan 1958
11/6/58	140 00	140 00		Jan 1959

1366

PLAINTIFF'S EXHIBIT No. 336

1920
[fol. 1366]

1 2 3 4 5 6 EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

FILE STARTS:
OMISSIONS:
LIBRARIAN:
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
1/11/60	140 00		A-1772	Thru Dec. 1960
3/15/60		140 00		
	345 00		A-1813	

PLAINTIFF'S EXHIBIT No. 337

1 2 3 4 5 6 EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

5-Microfilm
The Alabama State College
Acquisitions Department
The George W. Trenholm Memorial Library
Montgomery, Alabama

FILE STARTS:
OMISSIONS:
LIBRARIAN:
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS

PLAINTIFF'S EXHIBIT No. 338

1 2 3 4 5 6 EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

5-Microfilm
Alabama College Library
Montevallo, Alabama

FILE STARTS:
OMISSIONS:
LIBRARIAN: Abi Russell
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS

1367

PLAINTIFF'S EXHIBIT No. 339

[fol. 1367]

1921

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

5-Microfilm
Mobile Public Library
Reference Department
701 Government Street
Mobile 21, Alabama

FILE STARTS: 1951 –
OMISSIONS:
LIBRARIAN: Joe Templeton, Dir.
INSTRUCTIONS:
STANDING ORDER letter 6/2/55

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
5/11/57	3 00		3 0	Thru Dec 1958
6/3/57		180 00		
4/15/58	180 00		S. O.	Thru Dec 1959
5/14/58		180 00		
3/15/59			S. O.	Thru Dec 1960
6/16/59		180 00		
5/12/60	240 00	240 00	Expired	Thru Dec 1961

PLAINTIFF'S EXHIBIT No. 340

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

5-Microfilm
Air University Library
Acquisitions Branch, Serials Section
Maxwell Air Force Base, Alabama

FILE STARTS: M: 1951 –
OMISSIONS:
LIBRARIAN: Wayne S. Yenawine, Dir.
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
10/11/56	180 00		(61-600) 57-3[illegible]	Thru Dec 1957
11/14/56		180 00		
11/11/57	180 00		(61-600) 57-3[illegible]	Thru Dec 1958
3/10/58		180 00		
11/15/58	180 00		(61-600) 57-3[illegible]	Thru Dec 1959
12/14/59		180 00		
11/[illegible]/59	180 00		(61-600) 60-3[illegible]	Thru Dec 1960
12/19/59		180 00		

PLAINTIFF'S EXHIBIT No. 341

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D
1 2 3 4 5 6 7 8 9

5-Microfilm
Air University Library
Acquisitions Branch, Serials Unit
Maxwell Air Force Base, Alabama
AF 1709 LC

NEW CARD MADE 4/60

FILE STARTS: 1950 –
OMISSIONS:
LIBRARIAN: Wayne S. Yenawine, Dir.
INSTRUCTIONS:

DATE	DEBIT	CREDIT	P. O. No.	REMARKS
12/14/56	15 00		(61-600) 57-3911	1956 – Thru 1957
12/11/56		15 00		
2/11/57	18 00		(61-600) 57-3911	Thru Dec 1958
4/14/57		180 00		
3/11/58	180 00		(61-600) 57-3911	Thru Dec 1959
4/3/58		180 00		
11/[illegible]/58	[illegible]	180 00		
12/[illegible]/59	180 00	180 00	[illegible]	Thru Dec 1960

1368

PLAINTIFF'S EXHIBIT No. 342

1922
[fol. 1368]

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D

0 1 2 3 4 5 6 7 8 9

Microfilm
Air University Library
Serial Acquisition Section
Maxwell Air Force Base, Alabama

File Starts: 1950 –

Omissions:

Librarian: Wayne S. Yonamine, Dir.

Instructions:

Date	Debit	Credit	P. O. No.	Remarks
4/1/60	210 00		61-60 to 66	Thru Apr 1961
4/13/61		210 00		

PLAINTIFF'S EXHIBIT No. 343

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D

0 1 2 3 4 5 6 7 8 9

Microfilm
The Army Aviation School
Librarian
Bldg. 5313
Fort Rucker, Alabama

File Starts: 1958 –

Omissions:

Librarian:

Instructions:

Date	Debit	Credit	P. O. No.	Remarks
6/17/59	190 00		334-59	Thru May 1960
7/1/59		190 00		
6/1/60	454 00		591-60	Thru May 1961
6/13/60		310 00		

PLAINTIFF'S EXHIBIT No. 344

1 | 2 | 3 | 4 | 5 | 6 | EXPIRES: J F M A M J J A S O N D

0 1 2 3 4 5 6 7 8 9

Microfilm
Birmingham Public Library
700 N. 21st Street
Birmingham 3, Alabama

File Starts: 1950 –

Omissions:

Librarian:

Instructions:

Date	Debit	Credit	P. O. No.	Remarks
11/20/56	160 00	160 00	69 thru 75	Thru Dec 1956
11/21/56	180 00		76 thru 81	Thru Dec 1957
1/8/57		180 00		
11/20/57	180 00	180 00		
2/6/59	170 00	170 00		Thru Dec 59
2/11/60	160 00	160 00		Thru Dec 1960

1369

PLAINTIFF'S EXHIBIT No. 345

[fol. 1369]

1923

1	2	3	4	5	6	EXPIRES: J F M A M J J A S O N D 1 2 3 4 5 6 7 8 9 10 11 12

5-Microfilm
Alabama Polytechnic Institute
Serials Section
Main Library
Auburn, Alabama

FILM STARTS: Nov. 1931 - Dec. 1933
CONDITION:
LIBRARIAN: Clyde H. Cantrell, Dir.
INSPECTIONS:

Date	Issue		Copies		P. O. No.	Remarks
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
12/31/[illegible]	180	20	180	20	[illegible]	[illegible]
12/30/[illegible]	180	20	180	20	[illegible]	[illegible]
12/29/[illegible]	180	20	180	20	[illegible]	[illegible]
12/28/[illegible]	180	20	180	20	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

1370

1924

[fol. 1370]

PLAINTIFF'S EXHIBIT No. 346

[fol. 1371]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 347

THE NEW YORK TIMES.

TUESDAY, MARCH 29, 1960

L 25

"The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. . . .
Let Congress heed their rising voices for they will be heard."

—New York Times editorial
Saturday, March 19, 1960

HEED THEIR RISING VOICES

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom. . . .

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gased, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state-authorities by refusing to re-register, their dining

hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of de- [fol. 1372] mocracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter. . . . even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it this same Dr. King who founded and is president of the Southern Christian Leadership Conference —the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and techniques of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore,

is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before a [fol. 1373] watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as their . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.

YOUR HELP IS URGENTLY NEEDED . . . . NOW!

Stella Adler
Raymond Pace Alexander
Harry Van Arsdale
Harry Belafonte
Julie Belafonte
Dr. Algernon Black
Marc Blitztein
William Branch
Marlon Brando
Mrs. Ralph Bunche
Diahann Carroll
Anthony Franciosa
Lorraine Hansbury
Rev. Donald Harrington
Nat Hentoff
Dr. Alan Knight Chalmers
Richard Coe
Nat King Cole
Cheryl Crawford
Dorothy Dandridge
Ossie Davis
Sammy Davis, Jr.
Ruby Dee
Dr. Phillip Elliott
Dr. Harry Emerson Fosdick
John Killens
Eartha Kitt
Rabbi Edward Klein
Hope Lange

James Hicks	John Lewis
Mary Hinkson	Viveca Lindfors
Van Heflin	Carl Murphy
Langston Hughes	Don Murray
Morris Iushewitz	John Murray
Mahalia Jackson	A. J. Muste
[fol. 1374]	
Mordecai Johnson	Frederick O'Neal
L. Joseph Overton	Maureen Stapleton
Clarence Pickett	Frank Silvera
Shad Polier	Hope Stevens
Sidney Poitier	George Tabori
A. Phillip Randolph	Rev. Gardner C. Taylor
John Raitt	
Elmer Rice	Norman Thomas
Jackie Robinson	Kenneth Tynan
Mrs. Eleanor Roosevelt	Charles White
Bayard Rustin	Shelley Winters
Robert Ryan	Max Youngstein

WE IN THE SOUTH WHO ARE STRUGGLING DAILY FOR DIGNITY AND FREEDOM WARMLY ENDORSE THIS APPEAL

Rev. Ralph D. Abernathy	Montgomery, Ala.
Rev. Fred L. Shuttlesworth	Birmingham, Ala.
Rev. Kelley Miller Smith	Nashville, Tenn.
Rev. W. A. Dennis	Chattanooga, Tenn.
Rev. C. K. Steele	Tallahassee, Fla.
Rev. Matthew D. McCollom	Orangeburg, S. C.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Douglas Moore	Durham, N. C.
Rev. Wyatt Tee Walker	Petersburg, Va.
Rev. Walter L. Hamilton	Norfolk, Va.
I. S. Levy	Columbia, S. C.
Rev. Martin Luther King, Sr.	Atlanta, Ga.
Rev. Henry C. Bunton	Memphis, Tenn.
Rev. S. S. Seay, Sr.	Montgomery, Ala.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Samuel W. Williams	Atlanta, Ga.
Rev. A. L. Davis	New Orleans, La.

Mrs. Katie E. Whickham	New Orleans, La.
Rev. W. H. Hall	Hattisburg, Miss.
Rev. J. E. Lowery	Mobile, Ala.
Rev. T. J. Jemison	Baton Rouge, La.

[fol. 1375]

COMMITTEE TO DEFEND
MARTIN LUTHER KING AND THE
STRUGGLE FOR FREEDOM IN THE SOUTH

312 West 125 Street, New York 27, N. Y. UNiversity 6-1700 Chairman: A Phillip Randolph, Dr. Gardner C. Taylor; Chairman of Cultural Division: Harry Belafonte, Sidney Poitier; Treasurer: Nat King Cole; Executive Director: Bayard Rustin; Chairman of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi Edward E. Klein; Chairman of Labor Division: Morris Iushewitz

PLEASE MAIL THIS COUPON TODAY!

Committee to Defend Martin Luther King
and
The Struggle for Freedom in the South
312 West 125th Street, New York 27, N. Y.
UNiversity 6-1700

I am enclosing my contribution of $ .....
for the work of the Committee.

NAME .....
(Please Print)

ADDRESS .....

CITY ..... ZONE ..... STATE .....

..... I want to help ..... Please send further information

PLEASE MAKE CHECKS PAYABLE TO:

COMMITTEE TO DEFEND
MARTIN LUTHER KING

[fol. 1376]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

PLAINTIFF'S EXHIBIT No. 348

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, et al., Defendants.

Comes the defendant The New York Times Company, a corporation, by its Secretary, Harding F. Bancroft, and answers the plaintiff's interrogatories as heretofore propounded to it by order of the Circuit Judge in the Circuit Court of Montgomery County dated September 20, 1960.

8. An investigation was made by Messrs. Don McKee and Claude F. Sitton, a stringer and correspondent, respectively, for The New York Times Company. The results of their investigation as embodied in their telegraphic reports are attached to these interrogatories as Exhibits a and B.

9. The report of Claude F. Sitton, attached hereto as Exhibit B, had been previously telephoned to the individual named thereon. The substance of said telephonic report was as appears in Exhibit B.

12. All of the knowledge of this defendant with respect to the truth or falsity of the statements contained in the advertisement referred to are contained in the documents attached hereto as Exhibits A and B and the news stories previously referred to in this defendant's answer to interrogatory 4 herein. Said hearsay documents and news stories speak for themselves. Defendant reserves the right to supplement its answers to this interrogatory should

relevant facts come to its attention between the date of filing hereof the trial of the pending action.

18. See interrogatories 4 and 12 herein for answers.

THE NEW YORK TIMES COMPANY, a Corporation

By /s/ HARDING F. BANCROFT
Its Secretary

[fol. 1377]

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Personally appeared before me, the undersigned notary public, HARDING F. BANCROFT, who, after first being by me duly sworn, deposes and says that he as Secretary of The New York Times Company, a corporation, in this cause made the foregoing answers to interrogatories heretofore propounded to said defendant and subscribed to same as answers of said corporation and they are true and correct to the best of his knowledge and belief. This the 28th day of September, 1960.

/s/ EMILY WISSLER
Emily Wissler, Notary Public

(NOTARY SEAL)

IFGHNPCO18 NS CO32 NS MYA502 DPR COLLECT
MONTGOMERY ALA APR 14 451 PMC
ROBERT GARST, ASST MANAGING EDITOR
THE NEW YORK TIMES NYK

RE INFO REQUEST:

ALABAMA STATE COLLEGE SOURCES ARE DR. H. COUNCIL TRENHOLM, PRESIDENT, AND DR. LEVI WATKINS, DIRECTOR OF THE BUSINESS OFFICE WHICH ISSUES MEAL TICKETS, CONTROLS FOOD AND DORMITORY ACCOMODATIONS.

DR. TRENHOLM: "ABSOLUTELY NO TRUTH TO THE CHARGE THAT THE DINING HALL WAS 'PADLOCKED' TO 'STARVE STUDENTS INTO SUBMISSION.' I DON'T UNDERSTAND THROUGH WHAT

SOURCE, MALICIOUS OR OTHERWISE, THAT STATEMENT CAME."

TRENHOLM FURTHER REFUTES REFERENCE TO "ENTIRE STUDENT BODY REFUSING TO RE-REGISTER." FACTUALLY INCORRECT.

DR. WATKINS (PERSONAL INTERVIEW AND HE HAS RECORDS TO BACK THIS UP):

GAVE BACKGROUND TO SITUATION: QUARTER ENDED ON FRIDAY MARCH 4, PRE-REGISTRATION WAS MAR 2-5. STANDARD PROCEDURE FOR STUDENTS TO REGISTER OFFICIALLY WITH BUSINESS OFFICE BY MARCH 10.

[fol. 1378] NPCO17/2 MONTGOMERY, ALA.

UNDER STANDARD RULES STUDENTS REQUIRED TO HAVE MEAL TICKETS (ACTUALLY PRIVILEGE CARD FOR BOTH MEALS AND DORMS), WHICH ARE VALID BY QUARTER, TEMPORARY CARDS ISSUED UP THROUGH MARCH 9; NO FURTHER CARDS ISSUED EXCEPT ON BASIS OF ACTUAL REGISTRATION.

"MEAL COURTESIES WERE EXTENDED TO ALL (REPEAT ALL) STUDENTS THROUGH SUNDAY, MARCH 6." (TWO DAYS AFTER WINTER QUARTER ENDED.)

"THE BUSINESS OFFICE REMAINED OPEN ALL DAY SATURDAY AND SUNDAY (MARCH 5 & 6) TO ENABLE STUDENTS TO EITHER REGISTER OR MAKE ARRANGEMENTS FOR PRIVILEGE CARD."

AS TO "ENTIRE STUDENT BODY" REFUSING TO RE-REGISTER AS PROTEST, COLLEGE RECORDS SHOW 1,182 OF THE APPROXIMATELY 1,900 STUDENTS HAD PRE-REGISTERED PRIOR TO THE QUARTER'S END MARCH 4.

ON MONDAY (MAR7), FIRST DAY OF THE SUPPOSED PROTEST, 214 STUDENTS FOLLOWED THROUGH ON REGISTRATION: ON TUESDAY, 194

MORE DID SO AND BY WEDNESDAY A TOTAL OF 803 HAD TAKEN STEPS TOWARD PERMANENT REGISTRATION.

DR. WATKINS SAID EMPHATICALLY THE DINING HALL WAS NEVER "PADLOCKED"—EXCEPT FOR BEING LOCKED UP AT NIGHT AS USUAL, NO STUDENTS WHO WANTED MEALS WERE REFUSED; THOSE WHO HAD NO PRIVILEGE CARDS COULD HAVE BOUGHT MEALS.

NPCO18/3 MONTGOMERY, ALA.

"A NUMBER OF STUDENTS, WHO DURING THE WEEK SIMPLY STAYED ON AND TOK NO STEPS TO REGISTER,—THOSE PEOPLE DIDN'T EAT AS FAR AS THE DINING HALL WAS CONCERNED." (IF STUDENTS DON'T REGISTER, THEY AREN'T CONSIDERED STUDENTS.)

"IT IS CONCEIVABLE THAT SOME STUDENTS WHO FOR THEIR OWN REASONS DID NOT CHOOSE TO RE-REGISTER OR TO REQUEST TEMPORARY CAMPUS LIVING ACCOMMODATIONS PRIOR TO THEIR DECISION TO REGISTER, WERE WITHOUT COLLEGE MEAL SERVICE," SAID WATKINS.

"THE COLLEGE PRESUMED TO SERVE THOSE STUDENTS WHO HAD ACTUALLY REGISTERED FOR THE QUARTER OR WHO REQUESTED LIVING ACCOMMODATIONS, INCLUDING MEAL SERVICE, WHICH WERE AVAILABLE WITH OR WITHOUT THE ACTUAL PAYMENT OF FEES FOR TUITION PRIOR TO THE DEADLINE," HE CONTINUED.

[fol. 1379] THERE WERE ABOUT 75 STUDENTS WHO NEVER RE-REGISTERED BUT WHO WERE GIVEN BOTH MEAL AND ROOM PRIVILEGES, WATKINS SAID. ANY NUMBER OF STUDENTS WITNESSES CAN BE PRODUCED TO PROVE THE FALSITY OF THE "PADLOCK" STATEMENT, HE SAID.

AS TO THE EXPLUSION OF STUDENTS, THIS WAS ON GROUNDS OF THEIR INSUBORDINATION IN REFUSING TO STOP DEMONSTRATIONS ON ORDERS OF TRENHOLM AND OTHER OFFICIALS—THIS IS THE OFFICIAL STAND OF THE COLLEGE.

NPCO18/4 MONTGOMERY, ALA.

AS TO TRUCKLOADS OF POLICE, ETC., CITY POLICE ENTERED THE CAMPUS ONLY AFTER A MOB OF STUDENTS HAD THREATENED THE BUILDING AND GROUNDS CUSTODIAN NEGRO WHO TRIED TO PREVENT AN ON-CAMPUS DEMONSTRATION ON ORDERS OF THE PRESIDENT. A COLLEGE POLICE OFFICER FIRED HIS PISTOL INTO THE AIR IN AN EFFORT TO QUIET THE MOB BEFORE A PASSING CITY PATROL CAR INTERVENED, THE POLICE WERE ACTUALLY SEEING THAT ORDERS OF THE OFFICIALS WERE CARRIED OUT.

AS TO KING'S POLICE RECORD HERE:

MONTGOMERY POLICE FILES SHOW TWO ARRESTS ON JAN. 26, 1956, HE WAS ARRESTED FOR SPEEDING, RELEASED ON BOND, CONVICTED AND FINED $10 WHICH HE APPEALED AND LATER PAID, AND ON SEPTEMBER 3, 1958, HE WAS ARRESTED FOR LOITERING, RELEASED ON HIS OWN BOND, FINED $14 WHICH WAS PAID BY THE POLICE COMMISSIONER, IN NEITHER CASE WAS HE JAILED.

KIND HAS BEEN TWICE ARRESTED BY MONTGOMERY COUNTY SHERIFF'S OFFICER: ON FEB. 22, 1956, FOR VIOLATION OF STATE BOYCOTT LAW, AND ON FEB. 29, 1960, on CHARGE OF INCOME TAX RETURN FALSIFICATION.

NPCO18/5 MONTGOMERY, ALA.

TOTAL OF 4 ARRESTS.

AS TO DEMONSTRATIONS, ON SUNDAY MARCH 6, SEVERAL HUNDRED NEGROES, INCLUDING SOME STUDENTS, ATTEMPTED MARCH ON CAPITOL IN DIRECT VIOLATION OF POLICE WARNING AGAINST IT: POLICE PROCEEDING ON BASIS OF PRESERVING ORDER, I.E., AVERTING RACE RIOT, WELL WITHIN LEGAL RIGHTS. CONTRARY TO STATEMENTS, CITY-COUNTY-STATE POLICE AVERTED RIOT AND SAVED LIVES NO DOUBT OF NEGROES WHO AT ONE POINT APPEALED TO [fol. 1380] STATE PUBLIC SAFETY DIRECTOR FOR INSTRUCTIONS AND ADVICE ON HOW TO LEAVE THE SCENE. NOT ONE NEGRO WAS ARRESTED DURING NEAR-RIOT OR ATTEMPTED DEMONSTRATION.

—30—

DON MCKEE MONTGOMERY ALA.

(718PMEST)

1 ATLANTA For LOES, general counsel.

SITTON (TELEPHONED) May 5

Following is chronology of events in Montgomery, Ala., surrounding the demonstrations of Alabama State College students:

Feb. 25: Some thirty Alabama State College students sought service at a lunch counter in the Montgomery County Courthouse. They were refused.

Feb. 27: A large number of students marched from the college campus to the First Baptist Church (Negro) in downtown Montgomery, where they held a prayer meeting and pep rally.

Feb. 29: Gov. John Patterson relented somewhat from a position taken in an earlier public statement that all student participants in the Feb. 25 demonstration should be expelled. However, he strongly implied that such action should be taken in the case of the leaders.

2/1 ATLANTA x x x leaders. for Loeb

March 1: A thousand students marched from the Alabama State College campus to the State Capitol, where they held a demonstration on the Capitol steps. State officials watched the event. The students said the Lord's Prayer in unison and sang the National Anthem before marching back to the campus.

March 2: The State Board of Education, of which the Governor is chairman, met and ordered the expulsion of the nine student leaders of the demonstration.

March 5: City Police Commissioner L. B. Sullivan announced that no further demonstrations would be tolerated.

March 6: Authorities narrowly averted a riot as adult Negroes and a few students sought to march from the Dexter Avenue Baptist Church (Negro) to the Capitol, two blocks away, to hold a prayer meeting on the Capitol [fol. 1381] steps. The demonstration was designed to protest the expulsion of the nine student leaders.

3/1 ATLANTA x x x leaders for Loeb

March 7: Alabama State College students stayed away from classes in a strike in sympathy with those expelled. However, virtually all of them returned to class after a day. Even those expelled were allowed to come back and complete examinations then in progress.

March 8: Students met at a church near the campus, held a pep rally and distributed signs and then marched on the campus. The superintendent of grounds ordered them to leave, which they refused to do. There was considerable confusion, with students dancing around the campus in conga lines. Some became rowdy. A campus guard fired his gun into the air several times in an attempt to disperse them and the superintendent of grounds called the police. At this point the students left the campus but as they marched across the street the police arrived and arrested thirty-two of them on charges of disorderly conduct and failing to obey police officers. They were later convicted and fined $200 each and costs.

4/ ATLANTA x x x costs. for Loeb

Paragraph 3 of the advertisement, which begins, "In Montgomery, Ala., after students sang" etc., appears to be virtually without any foundation. The students sang the National Anthem. Never at any time did police "ring" the campus although on three occasions they were deployed near the campus in large numbers. Probably a majority of the student body was at one time or another involved in the protest but not the "entire student body." I have been unable to find anyone who has heard that the campus dining room was padlocked. Apparently students who refused to attend classes and also to sign a list requesting meal tickets were barred from the dining hall. However, even those taking part in the strike were admitted to the dining hall if they had signed a pre-registration application for the spring quarter or a request for temporary meal tickets.

[fol. 1382] 5/1 ATLANTA x x x tickets for Loeb

In reference to the 6th paragraph, beginning: "Again and again the Southern violators" etc.:

Dr. King's home was bombed during the bus boycott some four years ago. His wife and child were there but were not (repeat not) injured in any way. King says that the only assault against his person took place when he was arrested some four years ago for loitering outside a courtroom. The arresting officer twisted King's arm behind the minister's back in taking him to be booked. King says he has been arrested only three times in Montgomery—once for speeding, once on a charge of violating the state's anti-boycott law and once for loitering. He was arrested in Atlanta several months ago at the request of the Montgomery County authorities on an indictment charging him with two counts of perjury in a state income tax case. Conviction for perjury in Alabama carries a maximum penalty of five years imprisonment. He is, of course, charged with two counts.

END.....SITTON.....gc502 pm May 5.

1938

27416

L. B. Sullivan

vs.

New York Times Co.

DEFENDANT'S NEW YORK TIMES CO. ANSWERS TO INTERROGATORIES

Filed in Office
Sept 30, 1960

John R. Matthews
Clerk

[fol. 1383]

INTERROGATORIES TO DEFENDANT THE NEW YORK TIMES COMPANY

Omitted. Printed at side folios 20-23, pages 24-29, ante.

[fol. 1387]

27416

No. 578 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA.

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, a corporation, et al, Defendants.

ANSWERS OF THE NEW YORK TIMES COMPANY, a Corporation,

TO PLAINTIFF'S INTERROGATORIES,

BEDDOW, EMBRY & BEDDOW,
Attorneys for Defendant

FILED IN OFFICE
Sept. 16, 1960
John R. Matthews, Clerk

[fol. 1388]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 578

L. B. SULLIVAN, Plaintiff,

v.

THE NEW YORK TIMES COMPANY, a corporation, et al., Defendants.

ANSWERS OF THE NEW YORK TIMES COMPANY, A CORPORATION, TO PLAINTIFF'S INTERROGATORIES.

Comes the defendant, The New York Times Company, a corporation, and for answer to the interrogatories heretofore propounded to it by the plaintiff in this cause, says as follows:

1. The New York Times Company, a corporation; Harding F. Bancroft, 229 West 43rd Street, New York, New York, Secretary of the corporate defendant.

2. On or about March 25, 1960, one John Murray brought to The New York Times Plant at 229 West 43rd Street in the City of New York the original copy from which the advertisement referred to in this question was formed. This copy was delivered to one Gerson Aronson, an employee of this defendant, whose title or position with this defendant is a salesman in the National Advertising Department. Mr. Aronson delivered the original of this copy of this defendant's Production Department after making a thermafax copy of such copy, which said thermafax copy was placed on the desk of one D. Vincent Redding, who is an employee of this defendant and whose position is that of Manager of this defendant's Advertising Acceptability Department.

The Production Department sent the original of such copy to the composing room of this defendant's plant,

where some time during the period from about March 25, 1960 to the time of its insertion on March 29, 1960, it was set in type. During this intermin of time this defendant's Mr. Redding approved said copy for insertion as a paid advertisement in this defendant's newspaper.

This was all done pursuant to what is called an advertising insertion order for this ad by Union Advertising [fol. 1389] Service of 302 Fifth Avenue, New York, New York. Said Union Advertising Service was billed by this defendant according to the terms and conditions of said insertion order and was paid by said Union Advertising Service for the publication of said advertisement.

Mr. D. Vincent Redding, who has been previously identified in the foregoing answers, in checking the advertisement inquired about, ascertained that the same was endorsed by a large group of individuals among whom were persons whose general reputation for truth, integrity and honesty was known to Mr. Redding to be good and on the basis of this he had no reason to believe that anything contained in the ad was false and as the advertisement made no attacks on a personal character upon any individual and otherwise met the advertising acceptability standards promulgated by this defendant he, accordingly, approved it.

3. See last paragraph of preceding answer numbered "2". No written statement was made to this defendant regarding that which was done as answered in preceding answered number "2".

4. The New York Times, prior to the publication of the advertisement referred to and insofar as this defendant is able to determine from its records, had received from its reporters, string correspondents and the news services to which it subscribes news stories relating to certain of the events or occurrences referred to in the advertisement. These stories appeared in defendant's newspapers on the dates of February 18, 1960, March 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23, 27, 30, 1960, and April 1, 1960. The actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's motion to produce same and were introduced into evidence in this cause on a hearing

of this defendant's motion to quash service of process herein.

5. Attached is the copy in this defendant's possession which has been referred to in the preceding answer to interrogatory numbered 2 of the document forming the basis of the format from which this advertisement was composed. In the regular course of business the original of this document was not kept by this defendant and no longer exists as it is not customary on the part of this defendant to keep [fol. 1390] such documents in its files. The thermafax copy of the authorization for the use of the names attached to said advertisement is attached hereto and likewise the original of such was not kept by this defendant. Exhibits "A" and "B" respectively attached hereto.

6. Yes. This defendant did receive from plaintiff a demand for retraction by letter dated April 8, 1960, a copy of which is attached hereto as Exhibit "C".

7. Yes. The attorney for this defendant made reply to said demand, a copy of which is attached hereto as Exhibit "D".

8. Defendant, on advice of counsel, declines to answer this interrogatory inasmuch as the same calls for the results of an investigation initiated and made by the attorneys for this defendant after the publication of the advertisement complained of and in connection with the preparation of the defense of the action which defendant anticipated might be brought by this plaintiff and also calls for a conclusion and for an answer which is the ultimate inquiry before the Court and jury in this cause when the interrogatory makes reference to "correctness of statements contained in said advertisement."

9. Written reports were received by this defendant the substance of which had been telephoned previously. Defendant, on advice of counsel, declines to answer so much of this interrogatory which asks for the substance of the written and telephonic reports for the same reasons outlined in interrogatory 8 above.

10. No.

11. Yes. This defendant published a retraction with reference to the advertisement referred to in this suit in response to a demand from Governor John Patterson of the State of Alabama. It did so although in its judgment no statement in said advertisement referred to John Patterson either personally or as the Governor of the State of Alabama, nor referred to this plaintiff or any of the plaintiffs in the companion suits. The defendant, however, felt that on account of the fact that John Patterson held the high office of Governor of the State of Alabama and that he apparently believed that he had been libeled by said advertisement in his capacity as Governor of the State of [fol. 1391] Alabama, the defendant should apologize. A photostatic copy of this retraction is attached hereto as Exhibit "E". The retraction is self-explanatory.

12. On advice of counsel this defendant declines to answer this interrogatory as the same is incompetent, irrelevant and immaterial. It is likewise objectionable as an invasion of the province of the Court and jury and calls for answer which would be a conclusion as to the ultimate fact to be determined by the Court and jury in this cause on all of the evidence.

13. See answer to preceding interrogatory numbered 2.

14. We know of no such thing as is called "New York Times Advertising Index Expurgatory". However, we attach hereto the booklet "The New York Times Advertising Acceptability Standards", marked Exhibit "F", which we presume you are seeking.

15. See answer to preceding interrogatory numbered 2.

16. The number of issues of March 29, 1960 were approximately 650,000 and were given national distribution. Those issues sold or distributed in the City of Montgomery, State of Alabama, were sold or distributed pursuant to orders placed with The New York Times by wholesale or retail dealers or mailed to subscribers who has ordered subscriptions from The New York Times Company and the same were either mailed or otherwise shipped from New York City pursuant to said orders or orders for sub-

scriptions. The issues distributed in Alabama totaled approximately 394 copies. Of these approximately 35 copies went to Montgomery County.

17. No.

18. On advice of counsel defendant declines to answer this interrogatory as it invades the province of the Court and jury, calls for the names of witnesses, calls for an answer which would constitute a conclusion as to the ultimate question of fact to be determined by the Court and jury in this cause, and calls for incompetent and illegal conclusions on the part of this defendant and incompetent, irrelevant and immaterial evidence.

19. On advice of counsel defendant declines to answer this interrogatory as the same calls for evidence which is [fol. 1392] incompetent, irrelevant and immaterial.

/s/ Harding F. Bancroft
HARDING F. BANCROFT

STATE OF NEW YORK,
COUNTY OF NEW YORK,—ss.:

Personally appeared before me, the undersigned Notary Public, HARDING F. BANCROFT, who, after by me being duly sworn, deposes and says that he, as Secretary of the defendant, The New York Times Company in this cause, made the foregoing answers to the interrogatories heretofore propounded to said defendant by plaintiff and subscribed the same, and that said answers are true and correct to the best of his knowledge and belief.

This 13th day of September, 1960.

/s/ Emily Wissler
NOTARY PUBLIC

(NOTARY SEAL)

EXHIBIT "A"

HEED THEIR RISING VOICES

The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. Let Congress heed their rising voices, for they will be heard.

—New York Times editorial
Saturday, March 19, 1960

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom...

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters [fol. 1393] in the business district, they were forcibly ejected, tear-gased, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democ-

racy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter . . . even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workships and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove [fol. 1394] him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of the movements in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before

a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.

Your help is needed *now!*

COMMITTEE TO DEFEND MARTIN LUTHER KING
AND THE
STRUGGLE FOR FREEDOM IN THE SOUTH

A. Philip Randolph
Dr. Gardner C. Taylor
Chairmen

[fol. 1395]
Harry Belafonte
Sidney Poitier
Shelley Winters
Chairmen of Cultural Division

Nat King Cole
Treasurer

Father George B. Ford
Rev. Harry Emerson Fosdick
Rev. Thomas Kilgore, Jr.
Rabbi Edward P. Klein
Chairmen of Church Division

Morris Iushewitz
Chairman of Labor Division

Stella Adler
Raymond Pace Alexander
Harry Van Arsdale
Harry Belafonte
Julie Belafonte
Dr. Algernon Black
Marc Blitztein
William Branch
Marlon Brando
Mrs. Ralph Bunche
Diahan Carrol
Anthony Franciosa
Lorraine Hansbury
Rev. Donald Harrington
Nat Hentoff
James Hicks
Mary Hinkson
Van Heflin
Langston Hughes
Morris Iushewitz
Mahalia Jackson
[fol. 1396]
Mordecai Johnson
L. Joseph Overton
Clarence Pickett
Shad Polier
Sidney Poitier
A. Phillip Randolph
John Raitt
Elmer Rice
Jackie Robinson
Mrs. Eleanor Roosevelt
Bayard Rustin
Robert Ryan

Dr. Alan Knight Chalmers
Richard Coe
Nat King Cole
Cheryl Crawford
Dorothy Dandridge
Ossie Davis
Sammy Davis, Jr.
Ruby Dee
Dr. Phillip Elliott
Dr. Harry Emerson Fosdick
John Killens
Eartha Kitt
Rabbi Edward Klein
Hope Lange
John Lewis
Viveca Lindfors
Carl Murphy
Don Murray
John Murray
A. J. Muste
Frederick O'Neal
Maureen Stapleton
Frank Silvera
Hope Stevens
George Tabori
Rev. Gardner C. Taylor
Norman Thomas
Kenneth Tynan
Charles White
Shelley Winters
Max Youngstein

(Additional signers for the South)

We who are struggling daily for dignity and freedom in the South, warmly endorse this Appeal

Rev. Ralph D. Abernathy	Montgomery, Ala.
Rev. Fred L. Shuttlesworth	Birmingham, Ala.
Rev. Kelley Miller Smith	Nashville, Tenn.
Rev. W. A. Dennis	Chattanooga, Tenn.
Rev. C. K. Steele	Tallahassee, Fla.
Rev. Matthew D. McCollom	Orangeburg, S. C.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Douglas Moore	Durham, N. C.
Rev. Wyatt Tee Walker	Petersburg, Va.
Rev. Walter L. Hamilton	Norfolk, Va.
I. S. Levy	Columbia, S. C.
Rev. Martin Luther King, Sr.	Atlanta, Ga.
Rev. Henry C. Bunton	Memphis, Tenn.
Rev. S. S. Seay, Sr.	Montgomery, Ala.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Damuel W. Williams	Atlanta, Ga.
Rev. A. L. Davis	New Orleans, La.
Mrs. Katie E. Whickham	New Orleans, La.
Rev. W. H. Hall	Hattisburg, Miss.
Rev. J. E. Lowery	Mobile, Ala.
Rev. T. J. Jemison	Baton Rouge, La.

[fol. 1397]

EXHIBIT "B"

A. PHILIP RANDOLPH
217 West 125th Street
New York 27, N. Y.

March 23, 1960

Mr. Jerry Aaronson
New York Times
Times Square
New York New York

Dear Mr. Aaronson:

This will certify that the names included on the enclosed list are all signed members of the Commission to Defend

Martin Luther King and the Struggle for Freedom in the South.

Please be assured that they have all given me permission to use their names in furthering the work of our Committee

Sincerely,

A Philip Randolph,
Chairman

APR/tmk

EXHIBIT "C"

CITY OF MONTGOMERY
ALABAMA

March 8, 1960

BOARD OF COMMISSIONERS

EARL D. JAMES
President of the Commission

FRANK W. PARKS
Commissioner of Public Works

L. B. SULLIVAN
Commissioner of Public Affairs

The New York Times Company
Times Building
229 W. 43rd Street
New York, New York

Gentlemen:

You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of a certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, on page 25, published under the heading "Heed Their Rising Voices", and particularly the following false and defama-
[fol. 1398] tory matter contained therein,

"In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a matter as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama.

Very truly yours,

/s/ L. B. Sullivan
L. B. Sullivan
Commissioner

LBS:rf
REGISTERED MAIL
RETURN RECEIPT REQUESTED

[fol. 1399]

EXHIBIT "D"

April 15, 1960

Hon. L. B. Sullivan
Commissioner
City of Montgomery
Montgomery, Alabama

Dear Mr. Commissioner:

Your letter of April 8 sent by registered mail to The New York Times Company has been referred for attention to us as general counsel.

You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered by The Times to responsible persons.

We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we find no justification for the statement that the dining hall in the State College was "padlocked in an attempt to starve them into submission."

We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous.

In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you.

Very truly yours,

LORD, DAY & LORD

bcc Mr. Dryfoos
Mr. Garst
Mr. Redding

EXHIBIT "E"

The advertisement containing the statements to which Governor Patterson objects was received by The Times in the regular course of business from and paid for by a recognized agency in behalf of a group which included among its subscribers well-known citizens. The publication [fol. 1400] of an advertisement does not constitute a factual news report by The Times nor does it reflect the judgment or the opinion of the editors of The Times. Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting and correcting any errors or misstatements which may appear in its columns, herewith retracts the two paragraphs complained of by the Governor.

The New York Times never intended to suggest by the publication of the advertisement that the Honorable John Patterson, either in his capacity as Governor or as *ex officio* Chairman of the Board of Education of the State of Alabama, or otherwise, was guilty of "grave misconduct or improper actions and omissions." To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, the New York Times hereby apologizes to the Honorable John Patterson therefor.

EXHIBIT "F"

THE NEW YORK TIMES
ADVERTISING ACCEPTABILITY STANDARDS

The New York Times endeavors to exclude misleading, inaccurate and fraudulent advertisements and unfair competitive standards in advertising. The chief purpose of this policy of The Times is to protect the reader, and to maintain the high standards of decency and dignity in its advertising columns which The Times has developed over the years.

Following is a list of several classes of advertising The Times does not accept.

1. Fraudulent or deceptive advertisements.

2. Offers of something of value for nothing; advertisements that make false, unwarranted or exaggerated claims.

3. Advertisements that are ambiguous in wording and which may mislead.

[fol. 1401] 4. Attacks of a personal character.

5. Advertisements that reflect adversely on other advertisers or their goods.

6. Advertisements holding out the prospect of a large guaranteed dividend or excessive profits.

7. Advertisements that are indecent, vulgar, suggestive or otherwise offensive to good taste.

8. Matrimonial offers.

9. Medical advertising of products containing habit-forming or dangerous drugs; offers of free medical treatment; advertising that makes exaggerated remedial, relief or curative claims.

10. Advertisements of fortune telling, dream interpretations, individual horoscopes and nativity writings.

11. Any other advertising that may cause money loss to the reader, or injury in health or morals, or loss of confidence in reputable advertising and honorable business, or which is regarded by The New York Times as unworthy.

In addition, there are statements in other classes of advertising which The Times does not accept, as, for example, unwarranted promises of employment in school advertising, or the claim that any cosmetic will cure wrinkles or banish freckles.

The Times does not accept any advertising whatsoever of an individual or of a firm which it has reason to believe to be of undesirable character.

The text of every advertisement ordered for insertion in The Times is read first by the Publication Office staff, or in the case of Classified Advertising by the copy passers in that department. In addition, practically every display

advertisement is read by the staff of the Advertising Acceptability Department. When statements are discovered which that Department believes ought to be changed or eliminated, the advertiser or its advertising agency is notified.

Investigations are frequently made by the Advertising Acceptability Department to develop further information or to determine the accuracy of statements. The recognized [fol. 1402] agencies of investigation, such as the National and New York Better Business Bureaus are consulted and frequently are asked to shop an advertisement. Reports of commercial fact-finding agencies are utilized for their background information concerning business firms. In many classifications advertisers in The Times must fill out questionnaires. These classifications include: Financial, which has one questionnaire for securities dealers and one for advisory services; Book Exchange, Business Opportunities, Camps Education, Garden, Mail Order, Mortgages and Stamps and Coins.

In the case of financial advertising all announcements are first submitted to a special committee on financial advertising to advise the Advertising Acceptability Department. Now, financial advertisers must fill out questionnaires and The Times also obtains reports on them from commercial and governmental agencies.

If any advertiser makes inaccurate or misleading statements and refuses to correct them, the advertising is declined. Further, if The Times receives complaints from its readers which, upon investigation, convince the Advertising Acceptability Department that the business practices of the firm are unfair or open to question, The Times declines further announcements of that firm.

Another function of the Advertising Acceptability Department is to pass upon those questions which cannot be set forth in a code of rules but which have to do with advertising which may be offensive to good taste. The Times frequently requires changes in copy and illustrations in advertising which are distasteful or salacious.

RETAIL ADVERTISING

The following regulations apply to retail advertising:

1. General Statements.

Untrue, deceptive or misleading statements or illustrations are not acceptable.

2. Competitive Claims Which Refer to Quality or Price.

A. Statements or representations which refer to the goods, price, service or advertising of any competitor are not acceptable.

B. Statements which claim to undersell competitors are not acceptable.

[fol. 1403] 3. Competitive Claims on Policy or Business Methods.

A. Statements which make or imply, comparisons must confine those comparisons to the individual advertiser's own merchandise, services, prices or business methods.

B. Statements of fact, if generally known, and susceptible of definite proof are acceptable. No. 4. Bair Offers" "Bair offers of merchandise wherein the customer is denied a fair opportunity to purchase, are not acceptable. Some examples follow of expressions in advertisements which are not acceptable and the changes required to make them acceptable."

NOT ACCEPTABLE

The lowest price ever offered
The best buy in town
Will surpass anything you could possibly find
Unrivaled in fine quality
Unprecedented value (or quality)
Unheard of prices
The finest coat we have ever seen
We give you the most for your dollar
Superior to any you've seen at this price
We believe you will find these values greater than elsewhere

ACCEPTABLE AS REVISED

The lowest price we ever offered
One of the best buys in town
Will surpass anything we could possibly offer
Unexcelled in fine quality
Exceptional value (or quality)
Amazingly low prices
The finest coat we have ever sold
We give you exceptional value for your dollar
Superior to what you'd expect to find at this price
An outstanding value in men's footwear
We believe you will find these values unsurpassed

[fol. 1404] MEDICAL ADVERTISING

When advertising of any preparation is offered which advertises medication or treatment, The Times asks the opinion of medical consultants, including those in its own Medical Department and the recognized local and national medical bureaus of information.

These medical authorities do not exercise censorship over The New York Times medical authorities columns. The Times applies its judgment to the information and makes its own decisions.

The Times does not accept the advertising of any preparation which might lead to self-diagnosis or self-medication of any serious condition or illness.

The advertising, even of acceptable preparations, is carefully scrutinized.

The Times does not accept medical advertising which contains testimonials, questionable "before and after" illustrations, or any copy which goes too far in indicating that doctors "prescribe" or recommend any preparations for a stated illness or condition.

The Times does not accept the advertising of radio programs or broadcasts of non-acceptable medical preparations.

The Times does not accept the advertising preparations which may be harmless in themselves but which either in their newspaper advertising copy or on their labels or in their descriptive pamphlets make grossly unwarranted

claims. As a general policy, The Times does not permit racial or religious discrimination in its advertising columns.

THE NEW YORK TIMES
"All the News That's Fit to Print"

[fol. 1405]

PLAINTIFF'S EXHIBIT No. 349

THE NEW YORK TIMES

New York, Wednesday, March 2, 1960

1,000 NEGROES JOIN MARCH IN ALABAMA

BY Claude Sitton

Omitted. Printed at side folios 975-976, pages 1568-1569, ante.

[fol. 1407]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 350

UNION ADVERTISING SERVICE
302 Fifth Avenue
NEW YORK 1, N. Y. OXFORD 5-4860

_____If checked here, this is a space contract.
× If checked here, this is an insertion order.

No. _____

Date Mar. 28, 1960

TO PUBLISHER OF New York Times
CITY AND STATE

PLEASE PUBLISH ADVERTISING OF (Advertiser)
NAT'L COMMITTEE TO DEFEND
MARTIN LUTHER KING, JR.

SPACE 2400 Lines TIMES 1
DATES OF INSERTION Tuesday, March 29

this is substitute order for copy originally scheduled for March 28 and cancelled through Don Shakskaft

Position .....

Copy You Have Key ..... Cuts .....

Additional Instructions .....

Rate $2.08

Less Agency Commission 15 per cent on gross
Less Cash Discount ..... Per Cent on Net .....

UNION ADVERTISING SERVICE
PER M. Smith
NEW YORK CITY

[fol. 1408]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 351

THE NEW YORK TIMES MONDAY, MAY 16, 1960
22 L

TIMES RETRACTS STATEMENT IN AD

Acts on Protest of Alabama Governor Over Assertions in Segregation Matter

Gov. John Patterson of Alabama, acting as Governor and ex-officio chairman of the Alabama State Education Board, has protested to The New York Times certain statements in a paid advertisement of the Committee to Defend Martin Luther King and The Struggle for Freedom in the South, published in The Times last March 29.

Governor Patterson's letter was sent from his office in Montgomery on May 9 and received by The Times on May 12. The text of the Governor's letter and a statement by The New York Times follow:

You will hereby take notice that under and by virtue of the Laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in The New York Times of Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Ris-

-ing Voices," and particularly the following false and defamatory matter therein contained.

"In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years." [fol. 1409] The foregoing matter and the publication as a whole charge me with grave misconduct and of improper actions and omissions as Governor of Alabama and Ex-Officio Chairman of the State Board of Education of Alabama.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so that as the same relates to me and to my conduct and acts as Governor of Alabama and Ex-Officio Chairman of the State Board of Education of Alabama.

The statement by The New York Times read:

The advertisement containing the statements to which Governor Patterson objects was received by The Times in the regular course of business from and paid for by a recognized advertising agency in behalf of a group which included among its subscribers well-known citizens.

The publication of an advertisement does not constitute a factual news report by The Times nor does it reflect the judgment or the opinion of the editors of The Times. Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting and

correcting any errors or misstatements which may appear in its columns, herewith retracts the two paragraphs complained of by the Governor.

The New York Times never intended to suggest by the publication of the advertisement that the Honorable John Patterson, either in his capacity as Governor or as ex-officio chairman of the Board of Education of the State of Alabama, or otherwise, was guilty of "grave misconduct or improper actions and omissions." To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times hereby apologizes to the Honorable John Patterson therefor.

The advertisement bore the names of the following as signers:

Stella Adler, Raymond Pace Alexander, Harry Van Ars-
[fol. 1410] dale, Harry Belafonte, Julie Belafonte, Dr. Algernon Black, Marc Blitztein, William Branch, Marlon Brando, Mrs. Ralph Bunche, Diahann Carroll, Dr. Alan Knight Chalmers, Richard Coe, Nat King Cole.

Also, Cheryl Crawford, Dorothy Dandridge, Ossie Davis, Sammy Davis, Jr., Ruby Dee. Dr. Philip Elliott, Dr. Harry Emerson Fosdick, Anthony Franciosa, Lorraine Hansbury, the Rev. Donald Harrington, Nat Hentoff, James Hicks, Mary Hinkson, Van Heflin, Langston Hughes, Morris Iushewitz, Mahalia Jackson, Mordecal Johnson.

Also, John Killens, Eartha Kitt, Rabbi Edward Klein, Hope Lange, John Lewis, Viceca Lindford, Carl Murphy, Con Murray, John Murray, A. J. Muste, Frederick O'Neal, L. Joseph Overton, Clarence Pickett, Shad Polier, Sidney Poitier, A. Philip Randolph, John Raitt, Elmer Rice, Jackie Robinson.

Also, Mrs. Eleanor Roosevelt, Bayard Rustin, Robert Ryan, Maureen Stapleton, Frank Silvera, Hope Stevens, George Tabori, the Rev. Gardner C. Taylor, Norman Thomas, Kenneth Tynan, Charles White, Shelley Winters, Max Youngstein.

The advertisement bore the names of the following as endorsers from the South:

The Rev. Ralph D. Abernathy, Montgomery, Ala.; the Rev. Fred L. Shuttlesworth, Birmingham, Ala.; the Rev. Kelley Miller Smith, Nashville, Tenn.; the Rev. W. A. Dennis, Chattanooga, Tenn.; the Rev. C. K. Steele, Tallahassee, Fla.; the Rev. Matthew D. McCollum, Orangeburg, S. C.; the Rev. William Holmes Borders, Atlanta, Ga.; the Rev. Douglas Moore, Durham, N. C.; the Rev. Wyatt Tee Walker, Petersburg, Va.

Also the Rev. Walter L. Hamilton, Norfolk, Va.; I.S. Levy, Columbia, S.C.; the Rev. Martin Luther King, Sr., Atlanta, Ga.; the Rev. Harry C. Bunton, Memphis, Tenn.; the Rev. S. S. Seay, Sr., Montgomery, Ala., the Rev. Samuel W. Williams, Atlanta, Ga.; the Rev. A. L. Davis, New Orleans, La.; Mrs. Katie E. Whickham, New Orleans, La.; the Rev. W. H. Hall, Hattiesburg, Miss.; the Rev. J. E. Lowery, Mobile, Ala.; and the Rev. T. J. Jemison, Baton Rouge, La.

The advertisement bore the name of the Committee to [fol. 1411] Defend Martin Luther King and The Struggle for Freedom in the South, and of the following as its officers:

A. Philip Randolph and Dr. Gardener C. Taylor, chairmen; Harry Belafonte, Sidney Poitier, chairmen of cultural division; Nat King Cole, treasurer; Bayard Rustin, executive director; the Rev. George B. Ford, the Rev. Harry Emerson Fosdick, the Rev. Thomas Kilgore, Jr. Rabbi Edward E. Klein, chairmen of church division; Morris Iushewitz, chairman of labor division.

PLAINTIFF'S EXHIBIT No. 352

(Newspaper article, The New York Times, New York, New York, dated April 8, identified as Plaintiff's Exhibit No. 352, offered but Not received and disallowed by the Court.)

PLAINTIFF'S EXHIBIT No. 353

(One photograph, identified as Plaintiff's Exhibit No. 353, offered but Not received and disallowed by the Court.)

PLAINTIFF'S EXHIBIT No. 354

(One photograph, identified as Plaintiff's Exhibit No. 354, offered but Not received and disallowed by the Court.)

[fol. 1412]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 355

CITY OF MONTGOMERY
Montgomery, Alabama

March 8, 1960

Ralph D. Abernathy
1327 S. Hall Street
Montgomery, Alabama

Dear Sir:

You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Rising Voices", and particularly the following false and defamatory matter therein contained,

> "In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory [fol. 1413] material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama.

Very truly yours,

L. B. Sullivan
Commissioner

LBS:rkf

REGISTERED MAIL
RETURN RECEIPT REQUESTED

1964

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 356

CITY OF MONTGOMERY
Montgomery, Alabama

March 8, 1960

S. S. Seay
Madison Park
Montgomery, Alabama

Dear Sir:

You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times, Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Rising Voices", and particularly the following false and defamatory matter therein contained,

> "In Montgomery, Alabama, after students sang 'My County 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."
>
> [fol. 1414] "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama.

Very truly yours,

L. B. Sullivan
Commissioner

LBS:rkf

REGISTERED MAIL
RETURN RECEIPT REQUESTED

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 357

CITY OF MONTGOMERY
Montgomery, Alabama

March 8, 1960

J. E. Lowery
306 No. Warren
Mobile, Alabama

Dear Sir:

You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, [fol. 1415] on page 25, published under the heading, "Heed Their Rising Voices", and particularly the following false and defamatory matter therein contained,

"In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of

police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama.

Very truly yours,

L. B. Sullivan
Commissioner

LBS:rkf

REGISTERED MAIL
RETURN RECEIPT REQUESTED

[fol. 1416]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 358

CITY OF MONTGOMERY
Montgomery, Alabama

March 8, 1960

Fred L. Shuttlesworth
3232 29th Ave. North
Birmingham, Alabama

Dear Sir:

You will hereby take notice that under and by virtue of the laws of Alabama, I demand that you publish a retraction of certain false and defamatory matter published by you in the New York Times of Tuesday, March 29, 1960, on page 25, published under the heading, "Heed Their Rising Voices", and particularly the following false and defamatory matter therein contained,

> "In Montgomery, Alabama, after students sang 'My Country 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

> "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses'. And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."

The foregoing matter, and the publication as a whole, charge me with grave misconduct and of improper actions and omissions as an official of the City of Montgomery.

[fol. 1417] I further demand that you publish in as prominent and as public a manner as the foregoing false and defamatory material contained in the foregoing publication, a full and fair retraction of the entire false and defamatory matter so far as the same relates to me and to my conduct and acts as a public official of the City of Montgomery, Alabama.

Very truly yours,

L. B. Sullivan
Commissioner

LBS:rkf
REGISTERED MAIL
RETURN RECEIPT REQUESTED

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver ONLY to addressee ☐ Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Ralph D. Abernathy

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

1327 So. Hall, Montg., Ala.

C58—16—71848-4

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO. 1013

CERTIFIED NO.

INSURED NO.

NAME OF SENDER: City of Montg.

STREET AND NO. OR P. O. BOX: P. O. Box 1111

CITY, ZONE AND STATE

C58—16—71848-4

PLAINTIFF'S EXHIBITS NOS. 359 AND 360

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver ONLY to addressee ☐ Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

S. S. Seay

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

Madison Pk., Montg., Ala.

C58—16—71848-4

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS: Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO. 1014

CERTIFIED NO.

INSURED NO.

NAME OF SENDER: City of Montg.

STREET AND NO. OR P. O. BOX: P. O. Box 1111

CITY, ZONE AND STATE

1969

1417

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver ONLY to addressee ☐ Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

J. E. Lowery

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

306 No. Warren, Mobile, Ala.

CSE-16-71548-6

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS. Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print in front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO. 1015

NAME OF SENDER City of Montg.

CERTIFIED NO.

STREET AND NO. OR P. O. BOX P. O. Box 1111

INSURED NO.

CITY, ZONE AND STATE

CSE-16-71548-6

[fol 1418]

1970

PLAINTIFF'S EXHIBITS NOS. 361 AND 362

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver ONLY to addressee ☐ Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Fred L. Shuttlesworth

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

3237 29th Ave No. B'ham, Ala.

CSE-16-71548-6

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS. Fill in items below and complete #1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print in front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO. 3016

NAME OF SENDER City of Montg.

CERTIFIED NO.

STREET AND NO. OR P. O. BOX P. O. Box 1111

INSURED NO.

CITY, ZONE AND STATE

1418

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 363

LORD, DAY & LORD
25 Broadway
NEW YORK 4

April 15, 1960

Hon. L. B. Sullivan, Commissioner
City of Montgomery
Montgomery, Alabama

[fol. 1419] Dear Mr. Commissioner:

Your letter of April 8 sent by registered mail to The New York Times Company has been referred for attention to us as general counsel.

You will appreciate, we feel sure, that the statements to which you object were not made by The New York Times but were contained in an advertisement proffered to The Times by responsible persons.

We have been investigating the matter and are somewhat puzzled as to how you think the statements in any way reflect on you. So far, our investigation would seem to indicate that the statements are substantially correct with the sole exception that we find no justification for the statement that the dining hall in the State College was "padlocked in an attempt to starve them into submission."

We shall continue to look into the subject matter because our client, The New York Times, is always desirous of correcting any statements which appear in its paper and which turn out to be erroneous.

In the meanwhile you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you.

Yours very truly,

/s/ LORD, DAY & LORD

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 364

EXPULSION OF CERTAIN STUDENTS, ALABAMA STATE COLLEGE

Dr. H. Councill Trenholm, President, Alabama State College, complying with the former request of Governor Patterson, appeared before the Board and gave his report of the investigation relating to the downtown demonstration of certain students from the college in the matter of [fol. 1420] appearing at the Court House Restaurant and demanding service. It was determined by his investigations and that of Mr. Floyd Mann, Director of the State Department of Public Safety, that there were nine students who lead the demonstration. Dr. Trenholm agreed that the students should be punished and that their action might have been influenced by a student or students from out of the State. He earnestly requested that the students be allowed to take the final quarter examinations. The Board agreed that they be permitted to do so, but that the order of expulsion for the nine leaders of the demonstration be made effective Friday, March 4, and that the pupil record show such action, also that probation of other students taking part in the demonstration be made effective the same date. Dr. Trenholm stated that the participating students were obsessed with obligation and conviction and felt that they had done no wrong. He expressed the feeling that he could control future behavior on the campus and that the students should be reprimanded and put on probation from now on. The Governor felt that the situation was much too tense and the danger of life and blood shed too perilous to pass up lightly the matter of punishment of the participants. He then offered the following recommendation and moved its approval:

After a full investigation of the demonstrations carried on by the students of the Alabama State College for Negroes and after careful consideration of the evidence obtained as a result of the investigation, I recommend that the following action be taken:

1. That the following students be expelled:

Bernard Lee, Norfolk, Virginia
St. John Dixon, National City, California
Edward E. Jones, Pittsburg, Pennsylvania
Leon Rice, Chicago, Illinois
Howard Shipman, New York, New York
Elroy Emory, Ragland, Alabama
James McFadden, Prichard, Alabama
Joseph Peterson, Newcastle, Alabama
Marzette Watts, Montgomery, Alabama

[fol. 1421] 2. That the following students be placed on probation and allowed to remain in school pending good behavior.

Henry Allen, Seale, Alabama; Richard Ball, Fairfield, Alabama; Willis C. Battle, Phenix City, Alabama; Cornelius Benson, Birmingham, Alabama; Samuel Bouie, Anniston, Alabama; Floyd Coleman, Sawyerville, Alabama; Henry Crawford, Montgomery, Alabama; James Earl Davis, Prichard, Alabama; Thomas C. Ervin, Heflin, Alabama; Arthur Lee Foster, Montgomery, Alabama; Isham Harris, Troy, Alabama; Jonathan Hicks, Chatom, Alabama; Trenholm Hope, Selma, Alabama; Jerry Leon Johnson, Collinsville, Alabama; Andrew William Jones, Birmingham, Alabama; Eddie Lee McSwain, Eufaula, Alabama; Theophilus Moody, Camden, Alabama; Joe Louis Reed, Evergreen, Alabama; William Renfroe, Roba, Alabama; Robert Lee Woods, Heiberger, Alabama.

3. That all other members of the student body be advised that they will be expected to behave themselves and obey the law and that any future conduct on their part which is in violation of the law or calculated to incite riots and disorders will result in their immediate dismissal from the school.

Mr. Word moved the approval of the recommendation; his motion carried by all members voting aye.

I hereby certify that the above is a true and correct copy of an excerpt from the Minutes of the Alabama State Board of Education meeting, 2 p.m., Wednesday, March 2, 1960, Montgomery, Alabama.

/s/ Frank R. Stewart
Frank R. Stewart, Executive Secretary
Alabama State Board of Education and
State Superintendent of Education

(NOTARY SEAL)

Sworn to and subscribed before me this
the 28 day of October, 1960

/s/ Agnes Brindley
Notary Public

ORIGINAL

RECORDER'S COURT

CITY OF MONTGOMERY

vs.

Jefferson Underwood

Address

Date to be Tried MAR 8 - 1960

No. 89426

Color C Sex M

CHARGE	WITNESS FOR CITY	COL.	WITNESS FOR DEFENDANT	COL.
Vio. Sec. 3-3 TC Traffic Code Parking 1 Hour Limit				
100 CB	Officer Captain GOINS			

The Defendant appeared in open Court, in own proper person, the case was heard and the Defendant found guilty and fined $10.00 dollars and costs, in default of payment of fines and costs sentenced to hard labor for the City days.

Judge, Recorder's Court

ORIGINAL

RECORDER'S COURT

CITY OF MONTGOMERY

vs.

Jefferson Underwood

Address

Date to be Tried MAR 8 - 1960

No. 89427

Color C Sex M

CHARGE	WITNESS FOR CITY	COL.	WITNESS FOR DEFENDANT	COL.
[redacted]				
Disorderly Conduct				
100 CB	Officer Captain [redacted] GOINS			

The Defendant appeared in open Court, in own proper person, the case was heard and the Defendant found Not guilty and fined dollars and costs, in default of payment of fines and costs sentenced to hard labor for the City days.

Judge, Recorder's Court

P-365

1422

[fol. 1422]

PLAINTIFF'S EXHIBIT No. 365

1975

ORIGINAL

RECORDER'S COURT

Nº 89418

CITY OF MONTGOMERY

vs.

Date to be Tried 3-9-11

Alean R. Underwood MAR 8 - 1909

Address

Color W C Sex F

CHARGE	WITNESS FOR CITY	COL.	WITNESS FOR DEFENDANT	COL.
Vio. Sec. 3-3 TC				
100 ft CB	Officer Captain D. H. Lackey			

The Defendant appeared in open Court, in ____ own proper person, the case was heard and the Defendant ____ found Not guilty and ____ fined ____ dollars and costs, in default of payment of fines and costs ____ sentenced to hard labor for the City ____ days.

Judge, Recorder's Court

ORIGINAL

RECORDER'S COURT

Nº 89417

CITY OF MONTGOMERY

vs.

Date to be Tried 3-9-11

Alean R. Underwood MAR 8 - 1909

Address

Color C Sex F

CHARGE	WITNESS FOR CITY	COL.	WITNESS FOR DEFENDANT	COL.
Disorderly Conduct				
100 ft CB	Officer Captain D. H. Lackey			

The Defendant appeared in open Court, in ____ own proper person, the case was heard and the Defendant ____ found ____ guilty and ____ fined 1 Ct dollars and costs, in default of payment of fines and costs ____ sentenced to hard labor for the City ____ days.

Judge, Recorder's Court

P-865

1423

[fol. 1423] 1976

[fol. 1423a]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES, A Corporation, et al., Defendants.

DEFENDANT, THE NEW YORK TIMES COMPANY'S EXHIBITS ON MOTION TO QUASH

[fol. 1424]

DEFENDANTS' EXHIBIT No. 1

May 13, 1960

Mr. Wagner

The following is a breakdown of the amount of time members of our staff spent in Alabama in 1959 and 1960:

1959

Hurley

Birmingham	2 days
Montgomery	4 "
Selma	1 day

Monger

Birmingham	2 days

Sullivan

Mobile	8 days
Montgomery	4 "
Birmingham	2 "

J. McCullough

Birmingham)	3 days
)	
Montgomery)	

1960

Monger

Birmingham	1 day

/s/ ROGER ATWOOD
Roger Atwood

RWA:MM

[Vol. 1425]

DEFENDANTS' EXHIBIT No. 2

ALABAMA ACCOUNTS

Accounts	Agency	Lineage Decision	1959	Jan. Apr. 1960
Bellingrath Gardens	Howard Barney	Ala.	57	56
Birm. Com. of 100	Sparrow	Ala.	4,768	2,720
Ala. Bureau of Info.	Sparrow	Ala.	512	—
Ala. Gas Corp.	Sparrow	Ala.	120	98
U.S. Pipe & Foundry	H.B. Humphrey, Allay & Richards	Ala. & N.Y.	14	—
Ala. Planning and Industrial Development Board, & Bureau of Publicity and Information	Sparrow	Ala.		2,400
Southern Natural Gas	Sparrow & Dormis	Ala. & N.Y.		480
Ingalls Shipbuilding	Luckie AA	Ala.		326
Mobile Azalea Trail	Direct	Ala.		102
Blount Brothers	Direct	Ala.		112
Housing Authority of Decatur, Alabama	Direct	Ala.		140
University Press of Ala.	Direct	Ala.		42
War Eagle Supply	Direct	Ala.		28
Avondale Mills	N.W. Ayer	Ala. & N.Y.		4,250
Ala. State Docks	Howard Barnay	Ala.		2,400
			5,471	13,254

(The following were participants in the above co-op page:

Gulf Mobile & Ohio RR
American National Bank
Waterman Steamship Corp.
Mobile Ship Repair
Cooper Stevedoring
Murray Stevedoring
Rayan Stevedoring
L & N Railroad)

RWA/nt

[fol. 1426]

DEFENDANTS' EXHIBIT No. 3

UNION ADVERTISING SERVICE
302 Fifth Avenue
NEW YORK 1, N. Y. OXFORD 5-4860

.....If checked here, this is a space contract
× If checked here, this is an insertion order

No. .....
Date Mar. 28, 1960

TO PUBLISHER OF New York Times
CITY AND STATE

PLEASE PUBLISH ADVERTISING OF (Advertiser)
NAT'L COMMITTEE TO DEFEND
MARTIN LUTHER KING, JR.

SPACE 2400 Lines TIMES 1
DATES OF INSERTION Tuesday, March 29

this is substitute order for copy originally scheduled for March 28 and cancelled through Don Shakskaft

Position .....

Copy You Have Key ..... Cuts .....

Additional Instructions .....

Rate $2.08

Less Agency Commission 15 per cent on gross
Less Cash Discount ..... Per Cent on Net .....

UNION ADVERTISING SERVICE
PER M. Smith
NEW YORK CITY

DEFENDANTS' EXHIBIT No. 4

ALA	1960	
	Daily	Sun
Dealers	43	1014
Mail Subs	351	1430
	394	2440

[fol. 1427]

D. 650,000 Sun 1,300,000

DEFENDANTS' EXHIBIT No. 5

WHOLESALERS

Luni News Agency	Dothan, Ala.
Carters News Agency	Mobile, Ala.
Montgomery News Agency	Montgomery, Ala.
Anderson News Co.	Florence, Ala.
Gadsden News Co.	E. Gadsden, Ala.
Jefferson News Co. Inc.	Birmingham, Ala.

DIRECT ACCOUNTS

Alexander City, Ala.	
Bessemer	"
Greenville	"
Ozark	"
Selma	"
Talladega	"
Tuscaloosa	"
Tuskegee	"
" Institute	"

[fol. 1427a]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AT LAW

Case No. 27416

L. B. SULLIVAN,

Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, et als.

Defendants.

DEFENDANT, THE NEW YORK TIMES COMPANY'S EXHIBITS ON MERITS

[fol. 1428]

DEFENDANT'S EXHIBIT No. 6

UNION ADVERTISING SERVICE
302 Fifth Avenue
NEW YORK 1, N. Y. OXFORD 5-4860

____If checked here, this is a space contract
× If checked here, this is an insertion order

No. _____
Date Mar. 28, 1960

TO PUBLISHER OF New York Times
CITY AND STATE

PLEASE PUBLISH ADVERTISING OF (Advertiser)
NAT'L COMMITTEE TO DEFEND
MARTIN LUTHER KING, JR.

SPACE 2400 Lines TIMES 1
DATES OF INSERTION Tuesday, March 29

this is substitute order for copy originally scheduled for March 28 and cancelled through Don Shakskaft*

* Lines in ink are drawn through these two lines and the word "Killed" written through them.

Position .....

Copy You Have Key ..... Cuts .....

Additional Instructions .....

Rate $2.08

Less Agency Commission 15 per cent on gross
Less Cash Discount ..... Per Cent on Net .....

UNION ADVERTISING SERVICE
PER M. Smith
NEW YORK CITY

See Opposite ☞

The advertising agency placing advertising on behalf of a disclosed principal (hereinafter called "Agency") and the publication accepting this contract (hereinafter called "Publisher") hereby agree that this contract shall be governed by the following conditions:

1. TERMS OF PAYMENT

(a). Agency agrees to pay for all advertising published by Publisher in accordance with this contract. Agency shall make such payment at the office of Publisher or Publisher's authorized representative on or before the last day of the month following that in which the advertising is published, unless otherwise stipulated on Publisher's rate card. When cash discount is deducted, such payment shall be made on or before the cash discount date specified on said rate card, or if the cash discount date is not specified thereon, on or before the 15th of the month following.

Publisher agrees that Agency is solely liable for payment and that it will render bills to Agency not less often than monthly. Failure to render such bill monthly shall not constitute breach of contract.

(b). If Publisher or Agency furnishes drawings, plates or mats, Agency agrees to pay for same in accordance with Publisher's rate card and in the manner specified in paragraph (a) above.

(c). Agency agrees to prepay transportation and import charges on all cuts and mats sent to Publisher. If such charges are not prepaid, Publisher may either reject the cuts and mats or accept them and pay the charges. In the latter case Agency shall promptly reimburse Publisher.

(d). If, at the end of the advertising period named in this contract or upon prior termination of this contract for any cause, Agency has not used the full amount of advertising contracted for, Agency agrees to pay to Publisher an additional sum on all advertising published, such sum to equal the difference, if any, between the amount due at the rate named in this contract and the amount due at the rate applicable to the quantity of space used as stated in Publisher's rate card. Such additional sum shall not be due unless Publisher renders a bill therefor within 60 days after such expiration or termination. Upon rendition of such a bill, such additional sum shall become immediately due and payable.

Subject to the payment of such additional sum for advertising published, Agency may cancel this contract at any time or may use less space than the amount contracted for.

(e). Unless Agency makes written objection within 60 days from the rendering of any bill for advertising published under this contract, such bill shall be conclusive as to the correctness of the items therein set forth and shall constitute an account stated.

(f). Publisher reserves the right to cancel this contract at any time upon default by Agency in the payment of bills or in the event of any other substantial breach of this contract by Agency. Upon such cancellation charges for all advertising published and all other charges payable under this contract, including the short rates defined in paragraph (d), shall become immediately due and payable by Agency upon rendition of bills therefor.

If Agency defaults in the payment of bills, or if in the judgment of Publisher its credit becomes impaired, Publisher shall have the right to require payment for further advertising under this contract upon such terms as he may see fit.

(g). The post mark date on the envelope properly addressed to Publisher or to Publisher's representative shall be considered the date when payment is made.

2. RATES

(a). Publisher represents that all of his rates are published. Publisher shall furnish his rates to Agency if requested.

(b). "Publisher's rate card" shall be understood to mean the schedule of advertising rates of Publisher upon which this contract is based.

(c). Publisher represents that the rate stated in the contract is the minimum rate at which an equal or less amount of space, for the same class of advertising, to be published in a like position, under the same conditions, within the same period of time, can be secured at the time this contract is executed.

(d). If additional space is used within the period covered by the contract, where Publisher has a schedule of graduated rates, any lower rate shall be given if earned, according to Publisher's rate card on which this contract is based.

3. ADVERTISING MATERIAL

(a). The subject matter, form, size, wording, illustration and typography of the advertising shall be subject to the approval of Publisher but unless otherwise authorized in advance no change shall be made without the consent of Agency.

(b). If Publisher is unable to set any advertisement in the type or style requested, he may set such advertisement in such other type or style as in his opinion most nearly corresponds thereto, and the advertisement may be inserted without submission of proof unless proof before insertion is requested on the face of the order.

(c). When electrotypes or other material furnished by Agency accompany [illegible] of insertion order, Publisher should immediately communicate with Agency for definite instructions. If Publisher is unable to secure definite instructions from Agency, the advertising shall be omitted.

(d). If Agency has contracted for a series of insertions in a publication, and before closing date insertion order and copy for next issue have not been received by Publisher, Publisher shall notify Agency and follow Agency's instructions.

(e). Advertisements ordered set in "space as required" shall be measured [illegible] agate line.

4. PROOF OF INSERTION

(a). The page containing the advertising or, at the request of Agency, a copy of each issue in which the advertising appears, shall be mailed or otherwise supplied to Agency, which shall be deemed to have received such copy or page unless Publisher is notified in writing of the non-receipt thereof within thirty days after the date of publication. Publisher may mail or otherwise supply an affidavit of publication in lieu of a tendered copy or page containing the advertisement. Failure to forward or furnish such copy, page or affidavit shall not constitute a breach of the contract.

5. CIRCULATION

(a). Unless Publisher is a member of the Audit Bureau of Circulations, Agency shall be entitled, upon request, to a statement of net paid circulation verified by a certified public accountant, or in lieu thereof to the right to examine Publisher's circulation books.

6. OMISSION OF ADVERTISING

(a). Failure by Publisher to insert in any particular issue or issues invalidates the order for insertion in the missed issue but shall not constitute a breach of contract.

In newspapers the advertising must appear in all regular editions issued on the date for which the advertising is ordered. Advertisements omitted from any particular edition or editions must be reported to Agency and if received in time and omitted through fault of Publisher must be made up or adjusted unless otherwise instructed.

Unless otherwise stipulated, Publisher shall have the right to omit any advertisement when the space allotted to advertising in the issue for which such advertisement is ordered has all been taken, and also to limit the amount of space an advertiser may use in any one issue.

7. GENERAL

(a). In dealing with agencies, Publisher shall follow a uniform policy to avoid discrimination.

(b). Unless later date is specified in Publisher's rate card, advertising in newspapers shall begin within thirty days from the date of this contract, or contract becomes null and void.

(c). A waiver by either party hereto of any default or breach by the other party shall not be considered as a waiver of any subsequent default or breach of the same or any other provisions hereof.

(d). Agency represents that it is primarily engaged in the business of developing, servicing, and placing advertising, and that no advertiser, medium, or supplier has a direct or indirect financial interest in it, and that its principal owners are active in its work.

(OVER)

Copyright 1946, American Association of Advertising Agencies, Inc.

DEF XDT 6

[fol. 1429]

1429

1965

8-6

TUESDAY

Copy No.

Insert War Dept.

Name Nazi Spies Plot Against Martin Luther King

Charge Conspiracy

Address 30 Rockefeller Plaza

Position 2460 7th Ave

Nec. Space, Not Over 1 col Lines by 8 Cols.

Signed

Copy Passed By	Credit Approved
Sgt.	

1430

1986 [fol. 1430]

[fol. 1431] THE NEW YORK TIMES
TUESDAY, MARCH 29, 1960 L 25

"The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable . . . . . .

Let Congress heed their rising voices for they will be heard."

—New York Times editorial
Saturday, March 19, 1960

HEED THEIR RISING VOICES

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom . . . .

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, teargased, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, your American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democracy. [fol. 1432] Their courage and amazing restraint have in-

spired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter .... even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destory the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it is this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others.

The America whose good name hangs in the balance before [fol. 1433] a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.

YOUR HELP IS URGENTLY NEEDED . . . NOW!

Stella Adler
Raymond Pace Alexander
Harry Van Arsdale
Harry Belafonte
Julie Belafonte
Dr. Algernon Black
Marc Blitztein
William Branch
Marlon Brando
Mrs. Ralph Bunche
Diahann Carrol
Anthony Franciosa
Lorraine Hansbury
Rev. Donald Harrington
Nat Hentoff
James Hicks
Mary Hinkson
Van Heflin
Langston Hughes
Morris Iushewitz
Mahalia Jackson
Dr. Alan Knight Chalmers
Richard Coe
Nat King Cole
Cheryl Crawford
Dorothy Dandridge
Ossie Davis
Sammy Davis, Jr.
Ruby Dee
Dr. Phillip Elliott
Dr. Harry Emerson Fosdick
John Killens
Eartha Kitt
Rabbi Edward Klein
Hope Lange
John Lewis
Viveca Lindfords
Carl Murphy
Don Murray
John Murray
A. J. Muste

[fol. 1434]

Mordecai Johnson	Frederick O'Neal
L. Joseph Overton	Maureen Stalpleton
Clarence Pickett	Frank Silvera
Shad Poitier	George Tabori
A. Philip Randolph	Rev. Gardner C. Taylor
John Raitt	
Elmer Rice	Norman Thomas
Jackie Robinson	Kenneth Tynan
Mrs. Eleanor Roosevelt	Charles White
Bayard Rustin	Shelley Winters
Robert Ryan	Max Youngstein

WE IN THE SOUTH WHO ARE STRUGGLING DAILY FOR DIGNITY AND FREEDOM WARMLY ENDORSE THIS APPEAL

Rev. Ralph D. Abernathy	Montgomery, Ala.
Rev. Fres L. Shuttlesworth	Birmingham, Ala.
Rev. Kelley Miller Smith	Nashville, Tenn.
Rev. W. A. Dennis	Chattanooga, Tenn.
Rev. C. K. Steele	Tallahassee, Fla.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Douglas Moore	Durham, N. C.
Rev. Wyatt Tee Walker	Petersburg, Va.
Rev. Walter L. Hamilton	Norfolk, Va.
I. S. Levy	Columbia, S. C.
Rev. Martin Luther King, Sr.	Atlanta, Ga.
Rev. C. Bunton	Memphis, Ala.
Rev. S. S. Seay, Sr.	Montgomery, Ala.
Rev. William Holmes Borders	Atlanta, Ga.
Rev. Samuel W. Williams	Atlanta, Ga.
Rev. Al Davis	New Orleans, La.
Mrs. Katie E. Whickham	New Orleans, La.
Rev. W. H. Hall	Hattisburg, Miss.
Rev. J. E. Lowery	Mobile, Ala.
Rev. T. J. Jemison	Baton Rouge, La.

[fol. 1435]

COMMITTEE TO DEFEND MARTIN LUTHER KING AND HIS STRUGGLE FOR FREEDOM IN THE SOUTH

312 West 125 Street, New York 27, N. Y. UNiversity 6-1700. Chairmen: A. Phillip Randolph, Dr. Gardner C. Taylor; Chairmen of Cultural Division: Harry Belafonte, Sidney Poitier; Treasurer: Nat King Cole; Executive Director: Bayard Rustin; Chairman of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi Edward E. Klein; Chairmen of Labor Division: Morris Iushewitz

PLEASE MAIL THIS COUPON T O D A Y !

COMMITTEE TO DEFEND
MARTIN LUTHER KING

and

THE STRUGGLE FOR FREEDOM
IN THE SOUTH

312 West 125 Street, New York 27, N. Y.
UNiversity 6-1700

I am enclosing my contribution of $.....
for the work of the Committee.

NAME .....
(Please print)

ADDRESS .....

CITY ..... ZONE ..... STATE .....

..... I want to help ..... Please send further information

PLEASE MAKE CHECKS PAYABLE TO:

COMMITTEE TO DEFEND
MARTIN LUTHER KING

[fol. 1436]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 7

A. Philip Randolph
217 West 125th St.
New York 27, N. Y.

March 23, 1960

Mr. Jerry Aaronson
New York Times
Times Square
New York, New York

Dear Mr. Aaronson:

This will certify that the names included on the enclosed list are all signed members of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South.

Please be assured that they have all given us permission to use their names in furthering the work of our Committee.

Sincerely,

A. Philip Randolph
Chairman

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 8

HEED THEIR RISING VOICES

> The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. . . . Let Congress heed their rising voices, for they will be heard.
>
> —New York Times editorial
> Saturday, March 19, 1960

[fol. 1437] As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom . . .

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My County, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of de-

mocracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter .... even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—The Rev. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has so inspired and guided the students in their widening wave of sit-ins; and it this same Dr. King who founded and is president of the Southern Christian Leadership Conference [fol. 1438] —the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistence.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others.

The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and [fol. 1439] the struggle for the right-to-vote.

Your help is needed—*now*!

COMMITTEE TO DEFEND MARTIN LUTHER KING
AND THE
STRUGGLE FOR FREEDOM IN THE SOUTH

A Philip Randolph
Dr. Gardner C. Taylor
Chairmen

Harry Belafonte
Sidney Poitier
Shelley Winters
Chairmen of Cultural Division

Nat King Cole
Treasurer

Father George B. Ford
Rev. Harry Emerson Fosdick
Rev. Thomas Kilgore, Jr.
Rabbi Edward Klein
Chairmen of Church Division

Morris Iushewitz
Chairman of Labor Division

Stella Adler
Harry Van Arsdale
Julie Belafonte
Mare Blitzstein
Marlon Brando
Diahann Carroll
Richard Coe
Cheryl Crawford
Ossie Davis
Ruby Dee
Dr. Harry Emerson Fosdick
Lorraine Hansbury
[fol. 1440]
Nat Hentoff
Mary Hinkson
Langston Hughes
Mahalia Jackson
John Killens
Eartha Kitt
Rabbi Edward Klein
Hope Lange
John Lewis
Viveca Lindfors
Carl Murphy
Don Murray
John Murray
A. J. Muste
Frederick O'Neal
Maureen Stapleton
Hope Stevens
Rev. Gardner C. Taylor
Kenneth Tynan
Shelley Winters

Raymond Pace Alexander
Harry Belafonte
Dr. Algernon Black
William Branch
Mrs. Ralph Bunche
Dr. Alan Knight Chalmers
Nat King Cole
Dorothy Dandridge
Sammy Davis, Jr.
Dr. Philip Elliott
Anthony Franciosa
Rev. Donald Harrington

James Hicks
Van Heflin
Morris Iushewitz
Mordecai Johnson
L. Joseph Overton
Clarence Pickett
Shad Polier
Sidney Poitier
A Philip Randolph
Elmer Rice
John Raitt
Jack Robinson
Mrs. Eleanor Roosevelt
Rayard Rustin
Robert Ryan
Frank Silvera
George Tabori
Norman Thomas
Charles White
Max Youngstein

(Additional signers from the South)

We who are struggling daily for dignity and freedom in the South, warmly endorse this Appeal.

Rev. Ralph D. Abernathy
(Montgomery, Ala.)

Rev. Fred L. Shuttlesworth
(Birmingham, Ala.)

Rev. Kelley Miller Smith
(Nashville, Tenn.)

Rev. W. A. Dennis
(Chattanooga, Tenn.)

Rev. C. K. Steele
(Tallahassee, Fla.)

Rev. Walter L. Hamilton
(Norfolk, Va.)

I. S. Levy
(Columbia, S. C.)

Rev. Martin Luther King, Sr.
(Atlanta, Ga.)

Rev. Henry C. Bunton
(Memphis, Tenn.)

Rev. S. S. Seay, Sr.
(Montgomery, Ala.)

[fol. 1441]

Rev. Matthew D. McCollom
(Orangeburg, S. C.)

Rev. William Holmes Borders
(Atlanta, Ga.)

Rev. Douglas Moore
(Durham, N. C.)

Rev. Wyatt Tee Walker
(Petersburg, Va.)

Rev. J. E. Lowery
(Mobile, Ala.)

Rev. Samuel W. Williams
(Atlanta, Ga.)

Rev. A. L. Davis
(New Orleans, La.)

Mrs. Katie L. Chickham
(New Orleans, La.)

Rev. W. H. Hall
(Hattisburg, Miss.)

Rev. T. J. Jemison
(Baton Rouge, La.)

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 9

(Sent via Registered mail—receipt requested)

May 18, 1960

Dear Governor Patterson:

In response to your letter of May 9th, we are enclosing herewith a page of today's New York Times which contains the retraction and apology requested.

As stated in the retraction, to the extent that anyone could fairly conclude from the advertisement that any charge was made against you, The New York Times apologizes.

Faithfully yours,

/s/ Orvil Dryfoos

The Honorable John Patterson
Governor
State of Alabama
Montgomery, Alabama

hd (enclosed page 22 of NYT of 5/16/60)

bcc: Mr. Loeb
Mr. Sulzberger's office

[fol. 1441a] Reporter's and Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1442]
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, A Corporation, et als., Defendants.

DEFENDANT'S EXHIBITS, THE NEW YORK TIMES COMPANY, A CORPORATION, MOTION FOR A NEW TRIAL

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Friday, March 3, 1961.

[fol. 1443]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT 1

THE MONTGOMERY ADVERTISER Apr. 16, 1960

RESEARCH ON MOVE TO SUE TIMES FINISHED BY GALLION

Atty. Gen. MacDonald Gallion said Friday he had completed basic research of the law and facts concerning a proposed damage suit against The New York Times.

Gallion said definite recommendations had been drafted and would be presented to the "proper public officials" as soon as arrangements can be made.

Presumably one of the public officials is Gov. John Patterson, who is scheduled to return to his office Monday from a business trip to Puerto Rico.

Reports that such a suit might be filed began to circulate shortly after The Times published a full page advertise-

ment which sought funds to defend the Rev. Martin Luther King, Jr. who is under indictment charged with making false statements on his income tax returns in Alabama.

Gallion and others have denounced the advertisement as containing "false and unfounded" charges against public officials in Alabama.

The Montgomery City Commission last week demanded that The Times and certain other individuals who endorsed the appeal publish a retraction of the erroneous material.

The advertisement was signed by a number of prominent people including Mrs. Franklin D. Roosevelt, Marlon Brando, Harry Belafonte, Shelley Winters, Robert Ryan, Van Heflin, Hopé Lange and A. Philip Randolph.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 2

THE MONTGOMERY ADVERTISER APR. 9, 1960

COMMISSIONERS DEMAND RETRACTION

[fol. 1444] Montgomery's three City Commissioners Friday demanded a retraction by the New York Times for charges made in an advertisement carried in its March 29, editions.

The City Commission issued this statement:

"Each of the City Commissioners of Montgomery today, by registered mail, demanded that The New York Times and certain other individuals, publish a retraction of the defamatory material which was published in The New York Times recently.

"We demanded that a full and fair retraction be published in as prominent and public a manner as the false and defamatory material was published. We await their retraction."

Atty. Gen. MacDonald Gallion contends the full page ad sponsored by the "Committee to Defend Martin Luther King" contains vicious, unfounded and malicious lies."

The advertisement invited contributions to help pay legal expenses for the Rev. Martin Luther King, a Negro Baptist minister in Atlanta and leader in the 1955-56 Negro boycott of city buses here.

King is under indictment on a perjury charge in Montgomery Circuit Court in connection with his Alabama state income tax return.

The King committee's advertisement was signed by a number of prominent persons including Mrs. Franklin D. Roosevelt, actor Marlon Brando, singer Harry Belafonte, actress Shelley Winters and A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters.

In New York, The Times said it had no comment on the Commissioners' demand.

DEFENDANT'S EXHIBIT No. 3

THE MONTGOMERY ADVERTISER APR. 8, 1960

GALLION WEIGHS LEGAL ACTION AGAINST 'KING AD' SPONSORS

BIRMINGHAM (AP)—The Alabama attorney general said Thursday a New York Times newspaper advertisement which criticized Alabama contains "vicious, unfounded [fol. 1445] and malicious lies."

MacDonald Gallion said he had investigated certain charges in the advertisement, published earlier this week, and is considering possible legal action against the advertisement's sponsors.

He referred to an ad sponsored by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

Gallion attending a meeting of Southern Securities Administrators in Birmingham, said in a statement that he intends to make recommendations to Gov. John Patterson after the investigation is complete.

"We are sick and tired of warped and slanted attaeks on Alabama and the South and it is particularly reprehensible to be the subject of this lie attack," Gallion said.

The attorney general said "charges in the advertisement that the dining room at Alabama State College was padlocked recently are downright lies that reflect on the integrity of the people of this state as a whole."

Gallion said he had investigated these and other charges contained in the advertisement, and found them "completely untrue and unfounded."

Earlier, Secretary of State Bettye Frink said sponsors of the advertisement should be prosecuted "for falsifying the State of Alabama with lies . . ."

A spokesman in New York promptly called her statement "contempt for the Constitution."

Mrs. Frink said the ad contained lies and misleading statements.

The committee was organized to raise funds to help King fight a perjury charge in Alabama. The Negro Baptist minister is charged with turning in false Alabama state income tax returns.

Mrs. Frink, who is running for a delegate to the Democratic National Convention, said circulation of the newspaper through the mail constitutes "using the mails to defraud inasmuch as the ad contains misleading statements." [fol. 1446] "Each person whose name appears on the advertisement should have a warrant issued for them," the secretary of state said, "and if they ever come to Alabama, they should be arrested and prosecuted . . ."

She said she would willingly sign the warrants herself as a complaining party, but that she has not determined specifically what charge could be filed in Alabama.

The Montgomery Advertiser, in an editorial Thursday called the newspaper ad "Lies, Lies, Lies." It mentioned particularly a portion of the advertisement which said the dining room at Alabama State College was padlocked recently "in an attempt to starve" Negro students into submission during anti-segregation demonstrations.)

College officials said the dining room was "never padlocked."

In New York, Bayard Rustin, executive director of the King committee said:

"The State of Alabama, which has defiled the U. S. Constitution and the U. S. Supreme Court in denying civil rights to Negroes, now extends its contempt for the constitution in attempting to deny freedom of speech and public association by threatening the arrest and prosecu-

tion of distinguished American citizens whose truthful criticism is more than

He said, "Let Alabama adhere to the law of the land and it will cease to be humiliated."

The advertisement's signers included Mrs. Franklin D. Roosevelt, Actor Marlon Brando, Singer Harry Belafonte, actress Shelley Winters and A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters.

[fol. 1447]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 4

THE MONTGOMERY ADVERTISER Apr. 20, 1960

COMMISSIONERS SUE NEWSPAPER

By Arthur Osgoode

Montgomery's three City Commissioners are each suing the New York Times for a half a million dollars, charging they were defamed in an advertisement that solicited money to defend the Rev. Martin Luther King in his trial for perjury.

Also named as defendants in the suit, filed Tuesday afternoon in Circuit Court, are Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery.

Abernathy and Seay are Montgomery Negro ministers who were active with King in activities of the Montgomery Improvement Assn. Shuttlesworth is a Birmingham minister also active in integration movements and Lowery is a Negro minister and integration leader in Mobile.

Mayor Earl James and Commissioners Frank Parks and L. B. Sullivan charge in the libel action that false statements made in the advertisement reflected on them personally and on their performance of their official duties.

The portions of The Times advertisement they say defame their reputations are as follows:

"In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State

campus. When the entire student body protested to state authorities by refusing to re-register, their dining room was padlocked in an attempt to starve them into submission . . .

"Again and again the Southern violators were have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him several times—for 'speeding', 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for 10 years."

[fol. 1448] The advertisement also alludes to incidents in a number of other Southern cities, and maintains that the perjury action against King is designed to put him out of action as a leader of integrationist forces.

It is signed by a number of well known entertainment figures, including Marlon Brando, Shelley Winters, Eartha Kitt, Harry Belafonte, and Anthony Franciosa. Other signers include Mrs. Franklin D. Roosevelt, Norman Thomas and Dr. Harry Emerson Fosdick."

It was paid for by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

King has been charged with perjury in connection with the filing of state income tax returns. His trial is scheduled to come up here next month.

In the suit filed here Tuesday, the City Commissioners charge that the defendants "falsely and maliciously published in the state of New York, and in the City of Montgomery, and throughout the State of Alabama, of and concerning the plaintiff, in a publication entitled The New York Times, in the issue of March 29, 1960, on Page 25, in an advertisement entitled 'Heed Their Rising Voices,' false and defamatory matter of charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Ala., and imputing improper conduct to him, and subjecting him to public contempt, ridicule, and shame, and prejudicing the plaintiff in his office, profession, trade, or business, with an intent to defame the plaintiff . . ."

It further charges that the plaintiff "has suffered damage and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery; that he has been injured and damaged in the lawful pursuit of his office, profession, trade, or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and the plaintiff hence claims punitive damages . . ."

Suits were filed individually on behalf of Parks, James and Sullivan.

[fol. 1449] The suit held that since The New York Times is published out of the State and not qualified under State laws as doing business in the State, it is deemed to have appointed the Secretary of State of Alabama as its lawful attorney upon whom process may be served.

The law firms of Scott, Whitesell, and Scott, and Steiner Crum and Baker are representing the city officials.

The New York Times is represented by the New York Law firm of Lord, Day and Lord, according to Whitesell. The Present U. S. Attorney General, William P. Rogers, was a member of the firm. The former attorney general, Herbert Brownell, is a member of the law firm.

Once before Montgomery Commissioners have sued a publication for libel. In the previous city administration, Mayor W. A. Gayle and Commissioners Clyde Sellers and Frank Parks sued Ken Magazine for $750,000 over an article, "Kimono Girls Check In Again," which pictured the city as wide open to prostitution, gambling and narcotics.

After two days of testimony in U. S. District Court here the suit was settled out of court in November 1957 for $15,000 and a public apology. Like the suits filed against the New York Times, the Ken complaints were filed by the commissioners as individuals.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 5

THE MONTGOMERY ADVERTISER Apr. 28, 1960

PATTERSON PLANS N. Y. TIMES SUIT

Gov. John Patterson announced Wednesday he intends to sue the New York Times and four Alabama Negro integration leaders for a "substantial sum" in damages inflicted against him personally by an advertisement appearing in the newspaper March 29.

In a press conference summoned for the announcement, Patterson said he had retained Public Service Commissioner Ralph Smith, an attorney, to represent him in the case.

[fol. 1450] "I have made a considerable study of the advertisement in the New York Times and have come to the conclusion the ad was false and malicious and constitutes a defamation of the citizens of Alabama and particularly of the State officials," he said. "I have decided to sue the four Negro rabble-rousers who live in Alabama along with the New York Times."

The Alabama Negro integration leaders he referred to are the Revs. Ralph Abernathy and S. S. Seay, Sr. of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham and the Rev. J. J. Lowery of Mobile.

The advertisement sought funds for the defense of Dr. Martin Luther King, Jr., Negro integration leader who was indicted here for perjury concerning his state income tax returns.

Patterson said he had not yet decided how much he would seek in damages, but added that he understood the New York Times "is a rich paper and they ought to be able to pay."

"It will be a substantial sum," he said.

The advertisement, also signed by a long list of prominent persons, had already resulted in $1.5 million damages suits against the paper and the same four Negroes by the Montgomery City Commission.

Patterson said his suit would be filed for personal damages to his reputation and as such would be financed by

himself rather than by state funds. He said he did not feel the state as such has a cause for action.

While the suit stems directly from the advertisement, Patterson said a recent series of articles written by Times staffer Harrison Salisbury on the racial situation in Birmingham would be used in the case to show malice.

"Those articles were very vicious and untrue," he said.

Patterson said no work on the case would begin until after the Tuesday election, since Smith is currently a candidate in that election for a state at large seat at the Democratic National Convention.

The governor said he felt the case should be filed in state court, adding that he felt he had a "good case."

[fol. 1451] When asked if he thought The Times would be willing to stand trial in State Court, Patterson replied:

"I would suppose they would submit themselves in all fairness to the jurisdiction of our courts."

Patterson said he had been particularly upset by one statement in the advertisement which said state officials had padlocked the cafeteria at Alabama State College in an effort to starve the demonstrating negroes into submission.

"This was an absolute lie and I think the New York Times knows that was a lie," he said.

Patterson's action came after Atty. Gen. MacDonald Gallion made a study of the case and recommended that a suit be filed. Gallion had suggested that the members of the Board of Education, which includes Patterson, file the suit.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 6

THE MONTGOMERY ADVERTISER April 19, 1960

GALLION LIBEL SUIT DECISION READY TODAY

Atty. Gen. MacDonald Gallion will tell the Alabama Education Authority Tuesday whether he thinks the State should file a libel suit against the New York Times, as a

result of an advertisement published in that newspaper two weeks ago.

Ed Strickland, Gallion's executive secretary, said Monday the attorney general had decided to make a report of his findings to the authority since most of the state officials connected with the proposed suit are members of that group.

The authority includes State School Supt. Frank R. Stewart, Finance Director Charles Meriwether as well as Gallion.

Gov. John Patterson is not a member of the authority but is expected to attend the meeting.

[fol. 1452] Gallion announced last week-end he had completed research into the proposed case, stemming from the advertisement which sought funds for the defense of Negro intergration leader Martin Luther King.

Indication at the Capitol Monday was that Gallion would recommend that a suit be filed by the State Board of Education against the newspaper.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 7

April 15, 1960

THE MONTGOMERY ADVERTISER

'THE BIG LIE' EDITOR—WONDERS WHERE THE NEW YORK TIMES GOT ITS NEWS

By E. L. Holland, Jr.

Editorial Page Editor The Birmingham News

PRINCETON, N.J. You go North to Princeton, storied, ivied manse of the intellect, a community, you are told largely Southern in some ancestry. But what hits you in the face is The New York Times, of Tuesday, April 12, the day of arrival.

It is a gory mess, journalism. You have come North from the South, riding high and glorious in a winged silver bird

aboard which they shove champagne at you before you attack filet mignon. The sky is clear; the clouds are slight; the sun shines, all's right with the world.

You pay off this fellow and that on the trip from Newark to Princeton (the railway porter will tote your bags at 35 cents per), and you must take two trains to make the 30-odd miles. There, at the place where Scott Fitzgerald whiled away his time before becoming the novelist Hemingway pouted at most, you find all the brown ivy intact, the kids walking around in snow white tennis shoes and looking as if knowledge was whipped cream.

You passed acres of dingy two-story houses, factories, overhead wires of one electrical sort or another; you have seen grime and wondered why somebody didn't do something about it.

[fol. 1453] But this impression disappears on Princeton campus where all is orderly and neat and clean and windswept.

Still, you run into that New York Times story on page one of the historic journal in which Harrison E. Salisbury reports, the headline says that "Fear and Hatred Grip Birmingham."

You have just come from Birmingham and you do not know what Salisbury has in mind. You read his story and you still do not know.

STILL NOT HOME

Salisbury is a famous newsman, an ex-Moscow reporter for The Times. You have a feeling that he hasn't quite got home.

He notes that whites and blacks walk the same Birmingham streets, but that those streets, the water supply, and the sewer system are about all that the two races share.

You read that every channel of communication, every bit of "middle ground" has been "fragmented," and that this is reinforced "by the whip, the razor, the gun, the bomb, the torch, the club, the knife, the mob, the police and many branches of the state's apparatus."

Telephones are tapped, Salisbury "reports," and white and blacks don't talk "freely." Watchmen, Salisbury says,

guard Negro establishments. Federally handled mail is stymied and sometimes "it does not reach its destination." The eavesdropper, the informer, the spy "have become a fact of life."

Salisbury says some Negroes have nicknamed Birmingham the Johannesburg of America."

The business goes on. Businessman, says Salisbury, told him to watch how he reported. "Lives are at stake."

He fetches back to recall Roy Cohen and Florian Slappey stories, this to snipe and wickedly. He takes note of the Birmingham-Southern College situation, regarding students and the Negro problem, and he gives young student Reeves, a marty's halo. He cites a pair of Negro preachers picked up and the image Yankeeland gets is one of utter horror.

[fol. 1454] WHENCE THE NEWS?

This report from Jersey need go no further at this point. What this writer wants to ask of Salisbury is: Whom did you talk with? What Negroes and whites gave you this garish picture of a peaceable Southern community?

The reason for this prompt response, be it noted, is that on Princeton arrival we were told that among faculty members, this page one New York Times story was a hot topic of gossip.

This comes most inappropriately, when a conference of Southerners and others is beginning at this fine old school, discussing industrialization in the South.

It comes but a handful of days after the elected officials of Alabama raised the questions about distorted charge in an advertisement in The New York Times—an ad sponsored by those who would defend the Rev. Martin Luther King against an accusation that he had committed perjury in connection with income tax returns. Salisbury may have made this trip. He may have talked with various Birmingham people. We say this though, and flatly:

Other Northern newsmen have come South in this racial hegira. Virtually all have checked in with local newsmen to discover the sources of information.

These, invariably, have been offered. We have not seen Salisbury. If he was in Birmingham, he worked quite secretly.

Certainly he knew what he was out to get. He got it—or had it before he began writing.

MOSCOW BOUND

Here we stand at Princeton, ready with others to talk Southern community, perplexed as are many, with racial problems, as a city shot through with fear.

That headline says worlds: "Fear and Hatred Grip Birmingham."

This is the big lie. Perhaps the biggest of all. Salisbury has done his damage. Radio Moscow please copy. And, brothers and sisters, have no doubt they will.

[fol. 1455]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 8

THE MONTGOMERY ADVERTISER APR. 16, 1960

COMMISSIONERS TO FILE DAMAGE SUITS AGAINST NEW YORK TIMES FOR ARTICLES

BIRMINGHAM, (AP)—Birmingham's three City Commissioners said Friday they will file suits against The New York Times for articles critical of the city.

Birmingham Police Commissioner Eugene Connor labeled the articles which appeared in the April 8-9 editions of the Times as "cheap attempts to smear our city and state."

The articles depicted Birmingham as a city filled with "emotional dynamite of racism."

The two-part story under the byline of Harrison E. Salisbury, portrayed Birmingham as a city where telephones are tapped, mail is intercepted and opened, and where "the eavesdropper, the informer, the spy have become a fact of life."

Mayor James W. Morgan said "We have employed the law firm of Lange, Simpson, Robinson and Somerville to represent us as individuals in a damage suit against the New York Times."

Morgan said "The cost will be borne by us as individuals."

The other city commissioner is Street Commissioner J. T. Waggoner.

The commissioners said they have been advised that they possibly may recover punitive damages because they are elected to uphold Birmingham laws which the articles intimated had not been enforced.

"We think the stories were so unfair and untrue in so many respects that they were a reflection against people of Birmingham, both white and black," Morgan said.

"I'm sure they are resented by both races," he said.

Morgan said no figure has been set as to damages to be sought, but it was agreed that if the case is lost, the three commissioners will pay court costs.

[fol. 1456] It was agreed that the suit would be filed in state court in Alabama on the basis that the newspaperman who wrote the articles questioned visited Birmingham.

The attorneys said the first steps in the suit will be to demand apologies and retractions regarding the statements they claim are untrue, and then further action will be taken."

Connor said "it appears that the mighty Times is stooping again to gain circulation among those who seek sensationalism at our expense and believe what they want to believe."

Both the morning Birmingham Post-Herald and the evening Birmingham News published the Salisbury stories in full. The News published them on the front page. The Post-Herald said editorially:

"If the New York Times were out deliberately to promote race friction and to brain-wash its readers into the belief that hate and fear and lawlessness are rampant in the South it could not have done better than print the story."

The News said the Times stories set "a new standard for the anti-South propagandists."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 9

THE MONTGOMERY ADVERTISER April 17, 1960

THE ABOLITIONIST HELLMOUTHS

The Commonwealth of Alabama with its three million people has been painfully and savagely injured by The New York Times.

It is not inflation of grievance to say that The New York Times is misleading the United States and much of the civilized world.

The Times is read more widely and by more influential people than any other newspaper in the world. Not only is The Times heard by the leadership of the civilized world, it serves many American newspapers in syndicate fashion through the New York Times News Service.

[fol. 1457] One of the newspapers The Times has misled is The Louisville Courier-Journal. The Courier-Journal printed the Times report on race strife by Harrison Salisbury and the frenzied wasps of its afternoon editorial page, The Louisville Times, swallowed it and denounced Alabama in terms of South Africa—a shockingly superficial and spurious comparison.

With despair is it observed that any list of America's 15 most highly regarded newspapers would have a standard inclusion of The Times and The Courier-Journal.

These papers are owned and guided by dedicated, high-toned gentlemen. The managing editor of The Times is Turner Catledge; he is a Mississippian, a fine person and next week will be elected president of the American Society of Newspaper Editors.

Harrison Salisbury, the novelist who wrote this series on Birmingham, is a gentleman and a reporter of distinction. The editor debated him once in Chicago and found him winsome, genteel and rather remotely concerned about race matters.

Barry Bingham, editor and owner of The Courier-Journal, is a man so conscientious that in Asheville once

the editor saw him scurry back to put a nickel in the parking meter with only three minutes till 6 o'clock. He is as high-minded a man in the field of journalism as there is.

The executive editor of the two Louisville papers is a distinguished Georgian, Jim Pope, who will retire in Panama City Beach and who has orthodox Southern views.

The editorial writers employed by Bingham are brilliant but scandalously doctrinaire and dogmatic concerning anything stenciled "liberal". Yet some have Deep South backgrounds and know the truth.

So to say, it is not the systematic abolitionist ragpickers such as the New York Post or Time, the Goebbels memorial newsmagazine, that have inflicted this painful injury. It is the elite of the newspapers in a stage of dereliction and emotionalism that have done so.

The Advertiser has received no response to its challenge to The Times and members of the committee that signed the lying full-page advertisement about Montgomery. It seems incredible that men of honor could be challenged [fol. 1458] by a famous Southern newspaper to check the facts and ignore that challenge.

The only response was indirect. A Times editor asked The Times Montgomery correspondent to check the facts. The report went back in the direct quotes of a Negro college president. It made the advertisement out a greater lie than had The Advertiser editorial.

The Salisbury series on Birmingham naturally went to the outrageous extreme of equating the city with Hitler's Germany.

Birmingham is raw, like any industrial metropolis, and is likewise given to violence; but it is simply untruthful to equate it with Hitler.

Salisbury ignorantly pokes at the independent slate of presidential elector candidates as though it were a stealthy putsch or an attempted Reichstag fire, when as a matter of fact it is a constitutional exercise sanctioned by the Supreme Court. It employs the same election process by which George Washington, Thomas Jefferson and other of our early Presidents were elected.

The explanation here seems to be, considering Salisbury's character and decency, that he won his great distinctions

as The Times Moscow correspondent. All of his thinking, we noticed in our debate, is geared to this major experience in his career. It dominates his thinking. He approached Birmingham as though it were Moscow revisited.

The country has recently seen other Times reporters go sour. A widely publicized case was that of Herbert Matthews, who became the lionized stooge and apologist for Castro and his Cuba.

IN CIRCUIT COURT OF, MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 10

THE MONTGOMERY ADVERTISER

APRIL 21, 1960

STATE BOARD TOLD TO FILE 'TIMES' SUIT

BY Bob Ingram

Atty. Gen. MacDonald Gallion recommended Wednesday that members of the State Board of Education file a multi-[fol. 1459] million dollar suit against the New York Times.

He made his recommendation to Gov. John Patterson at a closed door conference shortly after noon. Patterson made no immediate comment on the matter.

Gallion's report stemmed from a detailed investigation of an advertisement published in The Times March 29 seeking funds for the legal defense of Negro integration leader Martin Luther King, Jr. King formerly of Montgomery, faces trial here next month on charges of falsifying state income tax returns.

'CONCLUSIONS DEFINITE'

"We have confirmed as a fact that many of the statements (in the advertisement) were complete lies," Gallion said. "Among them the untruthful and libelous statement, for example, that state authorities padlocked the dining hall of the Negro Alabama State College in an attempt to starve the Negro students into submission. This and other vicious charges certainly defame Alabama.

The only practical method to publicly expose this widely published matter, or, at least, the most effective method in my opinion, is before the bar of justice," Gallion continued. "My conclusions and recommendations were definite. File a multi-million dollar lawsuit."

The advertisement has already prompted a $1.5 million suit against the Times by the Montgomery City Commission.

The local city commissioners filed their suit Tuesday against the newspaper and four Negro integration leaders from Alabama who signed the ad—the Rev. F. L. Shuttlesworth, Birmingham; the Rev. J. E. Lowery, Mobile; and the Revs. Ralph D. Abernathy and S. S. Seay, Sr. of Montgomery.

The advertisement was also signed by a number of prominent persons including Mrs. Eleanor Roosevelt, Dr. Harry Emerson Fosdick, Marlon Brando, Shelley Winters, Eartha Kitt and Harry Belafonte.

Gallion is recommending the suit by the individual members of the State Board of Education, said the State of Alabama, as such does not have cause for action.

In Birmingham, meanwhile, city commissioners Wednes- [fol. 1460] day demanded an apology from the New York Times and threatened legal action if they don't get satisfaction.

The commissioners, after announcing their demand for a retraction, instructed attorneys to prepare a suit if the demand isn't met.

Contents of the written demand for an apology were not made public.

BESSEMER FILES

At nearby Bessemer, city commissioners by-passed a demand for an apology and directed City Atty. J. Howard McEniry to file suit.

Neither Birmingham nor Bessemer officials listed an amount they would ask in their proposed suits.

The action grew out of stories published last week in the Times. The stories, written by Harris Salisbury, were critical of race relations in that area.

Birmingham officials contended the articles gave a distorted picture of race relations and contained false statements about treatment of Negroes.

Mayor Jess Lanier of Bessemer said:

"The article has put us in a bad light throughout the country. It leads people to believe that the public officials here have no regard for the law. That is untrue."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 11

THE MONTGOMERY ADVERTISER May 21, 1960

TIMES ASKS COURT QUASH DAMAGE SUIT

The New York Times, sued by Montgomery city commissioners who say they were defamed in an advertisement, moved to quash the suit against them in Circuit Court here Friday.

[fol. 1461] The New York newspaper was charged by Mayor Earl James, Commissioners Frank Parks and L. B. Sullivan, with injuring their reputations as public officials in an ad that called for funds with which to defend the Rev. Martin Luther King.

King is to go on trial here Wednesday on charges of filing false state income tax returns.

The ad, which the commissioners contend was libelous, pictured Montgomery Negroes as subjected to police harassment when they attempted peaceful demonstrations.

McKEE AS AGENT

Representing the New York newspaper is the Birmingham firm of Beddow, Embry, and Beddow. The senior member Roderick Beddow, is one of Alabama's best known criminal lawyers.

The motion to quash the suit argued that the Times does not do business in Alabama and therefore cannot be sued in state courts.

Besides arguing that it is a foreign corporation, the New York paper held that Don McKee, state editor of The Advertiser, is not its agent in Alabama.

McKee has provided the Times with news stories on a correspondent basis. He was served with copies of the complaints as agent for the New York Times.

Two Negro ministers also named as defendants, Fred L. Shuttlesworth of Birmingham and Solomon Seay of Montgomery, filed demurrers to the suit Friday.

APPEARED IN APPEAL

Both denied that the complaint showed that they were responsible in any way for the alleged libel.

Two other Alabama Negro ministers, the Rev. Ralph Abernathy of Montgomery and the Rev. J. E. Lowery of Mobile, are also co-defendants in the case. The names of all four appeared in the King appeal.

The suit was filed over statements in the advertisement asking contributions for King that referred to racial incidents in Montgomery.

[fol. 1462] Specifically referred to were portions of the advertisement that said that the all-Negro lunchroom at Alabama State College was "padlocked in an attempt to starve" students into submission after they protested expulsion of student demonstration leaders.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 12

THE MONTGOMERY ADVERTISER

APRIL 27, 1960

TIMES STUDIES CORRECTION OF 2 STORIES

NEW YORK (AP)—The New York Times said Tuesday it would publish "an appropriate correction" if any incorrect or inaccurate statements were made in two stories published by the newspaper earlier this month on race relations in Birmingham, Ala.

The newspaper's statement, issued by Managing Editor Tuner Catledge, was published in reply to letters from three city officials in Birmingham.

The identical letters demanded that the newspaper "publicly retract as a whole" two articles written by Harrison E. Salisbury, a Times reporter. The stories appeared in the April 12 and April 13 editions of The Times.

The Times also published Tuesday the text of the letters from the three Birmingham officials. The letters were signed by Mayor James W. Morgan; Eugene Conner, Commissioner of public safety, and J. T. Wagoner, commissioner of public improvements.

The three complained that the Times stories falsely inferred that they had encouraged or condoned racial hatred or religious intolerance.

[fol. 1463]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 13

THE MONTGOMERY ADVERTISER

APRIL 29, 1960

GALLION LAUDS SUIT PLANNED AGAINST PAPER

The South must begin to fight back against "northern whipping bosses," Atty. Gen. MacDonald Gallion said Thursday in support of planned libel action against the New York Times.

"We in Alabama and the South must begin to fight back in matters wherein we are so unfairly attacked," he said, "and let the northern whipping bosses know we are not taking their abuses lying down."

Gallion said he was pleased that Gov. John Patterson has announced a libel suit against the Times and four signers of an advertisement carried in behalf of the Rev. Martin Luther King, Jr.

The full page advertisement published in the March 29 edition of the Times solicited contributions to pay the legal

expenses of the Negro integration leader who has been indicted for filing false returns of his Alabama state income tax.

Patterson announced Wednesday that he would file a libel suit in state court asking a substantial amount of damages against the New York Times newspaper because "I felt personally defamed" by the advertisement.

The ad was critical of the handling of racial affairs by public officials in Alabama.

Gallion said his office studied the laws and facts for possible libel action over the advertisement and added, "I believe the best interest of the people of Alabama will be served by such a suit."

Montgomery's Mayor Earl James and the other two city commissioners, L. B. Sullivan and Frank Parks, have already filed $500,000 libel suits each against the New York Times because of the ad.

[fol. 1464]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 14

THE MONTGOMERY ADVERTISER MAY 1, 1960

THE MISSING IF MEN CHOKED

If men choked on utterances of whining absurdity, Aubrey Williams would be here no longer among the living. And Lt. Gov. Albert Boutwell would be sworn in as governor.

Williams, an amiable and winsome handkerchief twister, has written an editorial in his Southern Farm & Home.

"There is something very frightening about the New York Times being sued by the Birmingham city commissioners. What this action amounts to when you come right down to it, is that any newspaper or magazine will risk being sued if they print anything uncomplimentary about a city. . . . Any (Southern) jury which hears such a case will very likely hand down a verdict of heavy damages against the newspaper."

Williams is thus saying that Southerners make dishonest and incompetent jurors.

Williams is next to ecstatic over enactment of the new U.S. civil rights law which makes federal judges conquistadores who can act against the state itself.

Williams is not disturbed that district judges have to act in obedience to dispensations of the political adventurers in Congress and the kangaroos of the Supreme Court.

Williams, instead, is agonizing because The New York Times has printed misrepresentations of conditions in Birmingham and may have cost the city a great deal and because The Times has printed demonstrable lies about the City of Montgomery and now is being called to the bar of justice.

Actually The Advertiser does not account Birmingham's case against The Times as strong as that of Montgomery's. But The Times can appeal if convicted. And if the suit proves frivolous it is our guardhouse lawyer assumption that The Times could then take action against the Birmingham commissioners for malicious prosecution.

[fol. 1465] Finally, what mocks Williams' tears for The Times is that his editorial in his quarterly was apparently written some days ago and since that time, The Times itself has commended to concede that its reporting was misleading. It is conceding even more in offering Birmingham an opportunity to correct the slander in the news columns of The Times.

Thus while The Times is informally pleading guilty, Williams is saying that the suit against it is evil!

But even so powerful an engine of absurdity as Williams does not have the track to himself as long as Gov. Patterson is in competition.

Patterson has emitted a crude and silly censure of the Alabama Journal for bringing to the attention of the people of Alabama that Highway Director Sam Engelhardt may be legally disqualified to serve as director.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 15

THE MONTGOMERY ADVERTISER MAY 12, 1960

$5 MILLION SUIT STARTED BY GOVERNOR

Gov. John Patterson revealed Wednesday he had initiated a $5 million damage suit against the New York Times and four Negro integration leaders from Alabama, the cases resulting from an advertisement published in the paper March 29.

Patterson said he was seeking $1 million in damages from each of the five defendants. He had not previously announced the amount he would seek.

The governor said letters had been mailed Tuesday to the Times and the Negro ministers—the Revs. Ralph D. Abernathy and Solomon S. Seay, Sr. of Montgomery, F. L. Shuttlesworth of Birmingham and J. M. Lowery of Mobile. [fol. 1466] The letters, all identical, contained a demand from Patterson that a retraction be made of "certain false and defamatory matter" carried in the advertisement.

He cited particularly the charge in the advertisement that state authorities padlocked the dining hall at Alabama State College for Negroes in an attempt to starve the protesting students into submission.

Patterson said in the letter that the advertisement charged him with "grave misconduct and improper actions and omissions as governor of Alabama and ex-officio chairman of the State Board of Education of Alabama."

"I further demand that you publish in as prominent and as public a manner—a full and fair retraction of the entire false and defamatory matter," Patterson's letter concluded.

In discussing the litigation, Patterson said he had received letters from people "all over the country" criticizing him for "padlocking the lunchroom."

"Nothing could be further from the truth than to accuse me of that," Patterson declared.

The full page ad, which sought funds to provide legal defense for integration leader Martin Luther King, Jr., previously had resulted in suits totaling $1.5 million filed against the Times by Montgomery City Commissioners.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 16

THE MONTGOMERY ADVERTISER MAY 4, 1960

BIRMINGHAM STATEMENTS PUBLISHED IN THE TIMES

NEW YORK (AP)—The New York Times Tuesday published a joint statement from two business-civic groups of Birmingham, Ala., expressing criticism of articles carried previously by the newspaper on racial tension in the South.

[fol. 1467] The statements had been invited by The Times and, like the earlier articles written by Harrison Salisbury, a New York Times reporter, were published on Page One.

The joint statement came from the Birmingham Chamber of Commerce and Birmingham's Committee of 100. The latter is a business organization of long standing, formed for the purpose of attracting business and industry to the Birmingham area.

The joint statement, printed in its entirety by The Times, was signed by Mortimer H. Jordan, president of the Birmingham Chamber of Commerce, and William P. Engel, chairman of Birmingham's Committee of 100.

In the same edition Tuesday, The Times published an additional statement from Turner Catledge, managing editor of The Times.

The Jordan-Engel statement said in part:

"The (Harrison Salisbury) stories presented to the readers of The Times as factual and purported presumably to give a fair appraisal of Birmingham, were in fact biased, warped and misleading. The 'facts' as adduced by Mr. Salisbury to support his attack were in most cases either outright misstatements or, which is worse, half truths.

"The people of Birmingham shocked by a pointless attack particularly in a newspaper of the prestige and stature of The Times, deeply and sincerely deplore the false image given to them.

"Birmingham's complaint is based principally on a sincere belief that your reporter, who was in the city less than 48 hours, apparently seeking sensationalism, used a few obvious cases involving violence and thereby presented a biased, unbalanced image of this thriving deep South metropolis....

"We do deny vigorously that the image presented by Mr. Salisbury is true, because it distorts and telescopes instances covering many prior years in an effort to provide a picture of the moment—a picture that is not true, even reasonably true.....

"Birmingham people do not see themselves in the image Mr. Salisbury has drawn of them. We have a community where people, regardless of race, creed or color, live a good life. Certainly we have extremists—but what city does not have? Yes, we have isolated cases of violence—but what [fol. 1468] city does not have such? Why do The New York Times articles generalize on the actions of a few? This cannot be the true story of any city—be it Birmingham or New York.

"Negro citizens in Birmingham have moved forward rapidly and steadily. Negro citizens have access to better than average educational, recreational and housing facilities....

"Birmingham schools for Negroes have progressed with the growing economic ability of the community. Since 1942, salaries for Negro and white teachers are on equal basis...

"Birmingham can point with pride to the opportunities for advancement offered to all races here. Could Negroes, or anyone else for that matter, have made such rapid progress under conditions such as those described by Mr. Salisbury?

"With equal introspection, most people of Birmingham recognize that problems abide in this community, as problems exist in every community. They are working on these problems. They ask to be allowed to continue work on these without the fanning influence of distorted imagery and misunderstanding by those who could not hope to understand the situation as it exists. Birmingham people ask only for objectivity...

In his statement Tuesday, Catledge pointed out that Salisbury had won a Pulitzer Prize for reporting in 1955, and was regarded as "one of the ablest and most perceptive reporters of The New York Times . . .

The New York Times has every confidence that Mr. Salisbury reported the situation as he saw it through the eyes of an objective newspaper man. He did not go to Birmingham 'seeking sensationalism' or anything else but the facts in a situation that involves Birmingham as well as other cities. We are only sorry that his findings had to be unpleasant to anyone."

Catledge then repeated from his earlier statement that "if in the further investigation of the situation The Times should find any statement in Mr. Salisbury's articles to be incorrect, or inaccurate in any respect, it will publish an appropriate correction.

A number of Birmingham city officials and civic groups [fol. 1469] earlier has asked the paper to run a retraction.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 17

THE MONTGOMERY ADVERTISER MAY 22, 1960

FALL-OUT FROM AD ERROR

As we said, the most damaging publication in which to be lied about is The New York Times due to the respect with which it is read throughout the world. However, the most desirable publication in which to be apologized to is The Times because it is a brillant caution flare to all other publications.

The Advertiser has no doubt that the recent checkmating of The Times in Alabama will impose a restraint upon other publications which have hitherto printed about the South what was supposed to be.

The Chicago Daily News, for example, printed news of The Times' retraction and apology to Montgomery under a six-column head on the inside.

"Authorities on libel law in New York," reported the Chicago Daily News, "say they can recall no precedent for The Times' action in retracting part of a paid advertisement."

The Chicago paper did not fail to inject some comedy into its story, such having been plentifully supplied by the NAACP director, Roy Wilkins. It quoted Wilkins as wailing:

"If the non-Southern publications are intimidated by the hypocritical caterwauling of the white supremacy practitioners, the press will join the Negro in the loss of rights, for freedom of the press will have gone down the drain."

The shallowness of this viewpoint is almost unbelievable. Such a zealot is Wilkins that he does not even discern that the question here is truth vs. a lie. That issue takes precedence over any issue of partisanship, Wilkins evidently wishes The Times to ignore the libel laws and stick to the lie because he considers it in a good cause.

[fol. 1470]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT 18

MONTGOMERY ADVERTISER May 7, 1960

SUITS FILED AGAINST TIMES

BIRMINGHAM (AP)—Birmingham's three city commissioners Friday filed damage suits claiming $500,000 each against the New York Times.

The suits, filed in U. S. District Court, charge The Times with printing a story April 12 "with intent to defame" the commissioners "falsely and maliciously."

Named in the suit were The New York Times Co. and Harrison E. Salisbury, a member of The Times' staff.

The story concerned Birmingham's racial troubles. All three complaints charged that the article subjected the

commissioners to "public contempt, ridicule, shame and disgrace."

The suits were filed by Mayor James W. Morgan, Police Commissioner Eugene (Bull) Conner and Public Service Commissioner J. T. Waggoner.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 19

THE MONTGOMERY ADVERTISER

MAY 17, 1960

PATTERSON WEIGHS SUIT IN LIGHT OF RETRACTION

BIRMINGHAM (AP)—Gov. John Patterson Monday said he would confer with attorneys before deciding what effect a retraction may have on his plans to sue The New York Times.

The Times Monday published a statement retracting part of a recently published paid advertisement of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

The Governor demanded a retraction in a letter sent [fol. 1471] May 9. He contended the advertisement accused him of "grave misconduct and of improper actions and of omissions" as governor and ex-officio chairman of the State Board of Education.

He has threatened to file suit.

Patterson, here to attend a meeting of the Birmingham Committee of 100, an industry-seeking group, said:

"The retraction proves that they knew the allegations in the ad were untrue."

The Times said it made an investigation, and added:

"To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, the New York Times herewith apologizes to the Hon. John Patterson therefor."

The two retracted paragraphs are:

"In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the state capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them to submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering,' and similar 'offenses.' And now they have charged him with perjury—a felony under which they could imprison him for 10 years.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 20

THE MONTGOMERY ADVERTISER MAY 20, 1960

THE TIMES ACKNOWLEDGES ERROR

The Governor of Alabama called The New York Times a liar, The Montgomery Advertiser and the Montgomery City Commission called The Times a liar.

[fol. 1472] The Times has now admitted it printed lies about Montgomery, has retracted and apologized.

The discreditable, fictional character of The Times content has been established and half-admitted by The Times.

The Times can hardly be expected to go back to 1956 and make an omnibus correction of all its distortions about Montgomery as not even the Sunday Times is large enough for that.

As for the prominent American and Broadway dudes whose names were married to the lies in the Times adver-

tisement, they evidently feel no shame and are unheard from. In the case of people such as Dr. Harry Emerson Fosdick and Elmer Rice, this surprises The Advertiser.

There is nothing new about such distortions, they are an old story to Alabamians. This just happens to be the time when it was possible to yank a curb bit against a mendacious jawbone.

In one sense there is consolation for Alabamians and Southerners in the results of the episodes. The Times is, if not the world's greatest paper, then certainly its most important. It has an exalted reputation for truth and restraint and its voice is heard internationally. It hurt the state to be misused in The Times, but the proof and acknowledgement of misrepresentation are many times more conspicuous than would be in any other publication.

Newspapers throughout the country will mark it well that The Times was forced into a humiliating acknowledgement of inaccuracy and unfairness. For them this will be a flaring caution light.

Perhaps some will speculate whether if Salisbury's Birmingham reporting was deceptive and deficient if Salisbury's vaunted Moscow reporting was likewise.

If The Times can't, or won't, gather and print the truth about American cities, how can it be relied upon to gather and print the truth about remote London, Paris, Belgrade, Warsaw, Budapest and Johannesburg?

One concession is cheerfully offered. The Times made correction in full and manly form. Time magazine, which [fol. 1473] is much more corrupt plus vicious, would never have made such a correction. Time's cynical unwillingness to make corrections is perhaps the rottenest aspect of its morality.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 21

MAY 27, 1960

THE MONTGOMERY ADVERTISER

BIRMINGHAM (AP)—The New York Times has asked U. S. District Court to dismiss three libel suits brought against The Times and Harrison E. Salisbury, a Times reporter, by Birmingham city officials.

The Times filed three motions challenging the jurisdiction of the court and contending the newspaper "has not done any business or performed any character of work or service in Alabama."

The suits were filed after the Times published an article under Salisbury's byline critical of the racial situation in Birmingham. Mayor James W. Morgan and City Commissioners J. T. Waggoner and Eugene Connor each asked $500,000 damages.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 22

MAY 31, 1960

THE MONTGOMERY ADVERTISER

FIVE NEGROES, TIMES SUED BY PATTERSON

By The Associated Press

With a promise to use the money for an old people's home, Gov. John Patterson Monday sued the New York Times and five Negro leaders for one million dollars.

Patterson charged that a recent full-page advertisement in The Times soliciting funds for the Rev. Martin Luther King, Jr. subjected the governor to "public ridicule, contempt and shame."

[fol. 1474] King, now a resident of Atlanta, was named as a defendant in the libel suit along with the New York

paper and four Alabama Negroes—the Rev. F. L. Shuttlesworth of Birmingham, the Rev. J. E. Lowery of Mobile and the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr., of Montgomery.

The advertisement, seeking funds to pay King's legal costs for his recent perjury trial, bore the names of the four other Negroes along with several actors, clergymen and others prominent in public life.

King, accused of falsifying his state income tax returns in 1956, was acquitted by an all-white jury here Saturday but is still under indictment on a similar charge involving his 1958 returns. State's attorneys declined to say whether the other indictment will be tried.

Although he filed the suit as governor and ex-officio chairman of the State Board of Education, Patterson said he considered it also a complaint "in behalf of the people of Alabama."

He said if he receives a judgment, he will donate the money to the state "for the construction of a modern, well-equipped nursing home for our needy old folks."

His promise to use the money for a charitable cause came in a prepared statement accompanying the suit.

The complaint filed in Circuit Court quoted two paragraphs of The Times ad which was published March 29. Although the newspaper later retracted those paragraphs, the governor said he did not consider it a "full and fair" retraction.

King was included as a defendant although his name did not appear in the advertisement. The governor's office said he was brought into the suit because the ad was published in his behalf.

In its retraction on May 16, the Times said it took the paid ad as part of the normal course of business and that its content did not reflect the paper's editorial judgment or opinion.

It said that by publishing the advertisement, it never intended to suggest a charge against the governor, and added:

"To the extent that anyone can fairly conclude from the statement in the advertisement that any such charge was

[fol. 1475] made, the New York Times hereby apologizes to the Hon. John Patterson.

The advertisement spoke of racial conditions in Montgomery during recent student demonstrations and said the dining hall of Alabama State College was padlocked" in an attempt to starve the students into submission.

College authorities denied that the dining room was padlocked.

Montgomery's three city commissioners also have sued the Times because of the same ad. They asked $500,000 each.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 23

THE MONTGOMERY ADVERTISER JUNE 14, 1960

TIMES CHALLENGES BESSEMER SUITS

BIRMINGHAM (AP)—The New York Times Co. has asked U.S. District Court here to dismiss three libel suits brought by city commissioners of nearby Bessemer.

The Times contended in a motion for dismissal that it does not do business in Alabama and is not subject to jurisdiction of a court located in Alabama.

Mayor Jess Lanier and Commissioners Raymond Parson and Harman Thompson each filed suit in May asking $500,000 damages for an article in the Times describing racial problems in Birmingham and Bessemer.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 24

July 1, 1960

THE MONTGOMERY ADVERTISER

N. Y. TIMES LOSES IN MOVE TO HAVE RECORDS CLOSETED

The Alabama Supreme Court says Judge Walter B. Jones has a right to ask The New York Times to produce documents that will help determine if the newspaper was [fol. 1476] doing business in Alabama when it published an advertisement which city officials say libeled them.

The Court Thursday dismissed a petition for mandamus filed by The Times against Judge Jones which would have required him to set aside his order to produce the papers. The particular case ruled on involves the $500,000 libel suit by Commissioner L. B. Sullivan.

The Jones order requires the Times to produce documents, old editions and letters from its Alabama correspondents; Jones has given the newspaper until Wednesday to surrender the files for use in considering The Times' plea that libel suits filed by Sullivan and Commissioner Frank Parks and Mayor Earl James are set for July 25 on the motion to dismiss the libel suits.

The advertisement on which the commissioners base their suits appeared in The Times on March 29, 1960, under name of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South.

The officials contend that the advertisement contained misinformation which reflected on their administration.

The Times contends that the suits should be thrown out on the grounds that the newspaper was not doing business in the State when it was published—the full page advertisement. In the matter decided by the Supreme Court, Sullivan's attorneys claimed that the requested documents were needed to decide if The Times was doing business in Alabama.

The Times advertisement claimed, among other things, that the dining hall at Alabama State College here was padlocked in an effort to starve demonstrating students into submission.

The case is expected to be tried in the October term of circuit court.

Lawyers for The Times are from the Birmingham firm of Beddow, Embry and Beddow. Sam Rice Baker and Roland Nachaman represent Sullivan.

[fol. 1477]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 25

THE MONTGOMERY ADVERTISER

TIMES SWITCHES 'BAMA, OLE MISS

WASHINGTON (AP)—Rep. George Huddleston (D-Ala.) Wednesday chided the New York Times for a map of the Southeast in which Alabama and Mississippi were transposed.

The map was used to illustrate the newspaper's article on the Supreme Court's decision Tuesday dealing with offshore oil rights.

Due to a mechanical error, the map as published in some editions labeled the area of Alabama as Mississippi and Mississippi as Alabama. It also placed Montgomery and Mobile in the state labeled as Mississippi.

Huddleston said in a statement it was surprising that the Times should display such apparent ignorance of geography.

JUNE 2, 1960

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 26

JUNE 1, 1960

THE MONTGOMERY ADVERTISER

BIRMINGHAM (AP)—MAYOR Jess Lanier of nearby Bessemer and two other city officials have filed libel suits against the New York Times because of a story critical of racial troubles here.

The individuals suits for $500,000 were filed in U. S. District Court Friday.

Birmingham's three commissioners filed similar action May 6, also asking $500,000 each.

The story published by the Times several weeks ago mentioned conditions in Bessemer.

The suits filed in the names of Lanier and commissioners Raymond Parsons and Herman Thompson, charged that [fol. 1478] the story subjected them to "public contempt, ridicule, shame and disgrace."

They said the New York newspaper failed to publish a full and fair retraction.

Monday Gov. John Patterson filed libel suit against the Times and five Negroes. Patterson's complaint, seeking a million dollars, was filed in circuit court at Montgomery.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 27

JULY 27, 1960

MONTGOMERY ADVERTISER

LAWYERS ADD TO DOCUMENTS IN LIBEL SUIT

By Arthur Osgoode

New York Times attorneys Monday continued their efforts in Circuit Court to keep the newspaper from being

sued for libel in an Alabama court by Montgomery's three city commissioners.

Attorneys for the city officials at the same time kept adding to a growing stack of documents, all intended to show that the New York newspaper does business in this state and hence can be sued in state court.

Defense witnesses who testified Tuesday were Harold Faber, day national news editor, and Joseph Wagner, national advertising manager of the Times.

Faber, who had occupied the witness stand during most of the hearing Monday, continued to identify Times news stories dealing with Alabama events.

PROCEDURES QUESTIONED

Roland Nachman, attorney for the plaintiffs, questioned Faber as to procedures used by the Times in gathering and selecting news stories from Alabama.

He also asked whether the New York paper has a contract with the Associated Press, which provides it with news stories originating in Alabama and elsewhere.

[fol. 1479] Judge Walter B. Jones ruled against defense objections to this line of questioning and with Nachman, who pointed to a recent Supreme Court decision.

In the decision, said Nachman, the court had ruled that a concern is doing business in a state when it has contracted with another concern to conduct operations for it in that state.

DREW PROTEST

Jones' ruling drew a protest from Louis Loeb, of the New York firm of Lord, Day, and Lord which represents the New York Times. Loeb called it "the ultimate in stretching the concept of doing business."

Faber also was questioned as to what the term "Special to The Times" meant when it preceded news stories. Faber replied that it might mean that the story came from a string correspondent or a regular staff member, or that a staff member in New York had made a special effort to get the story.

In testimony Monday, Nachman sought to show that "string" correspondents acted as agents for The New York Times newspaper in Alabama, and that the Times therefore does business in the state.

Defense attorney Eric Embry, of the firm of Beddow, Embry and Beddow, Tuesday questioned Pace on the cards on which the names of string correspondents for the Times are recorded.

He established that spaces on the card showing the correspondent's employer, title, and related information refer to the newspaper by which he is employed and not to the Times.

ADVERTISING METHODS

Wagner testified to the methods by which the New York Times solicits advertisements in Alabama.

He said two Times advertising solicitors have visited in Alabama this year, but that they do not live in Alabama and that the Times does not to his knowledge own an office or real estate in Alabama.

Questioned by Embry, he said that the New York paper ran 60 million lines of advertising in 1959, of which only 5,471 lines were from Alabama advertisers.

Under cross examination by Nachman, Wanger said he [fol. 1480] has a "vague idea" that the Times gets from 70 to 75 per cent of its revenues from advertising.

Embry protested Nachman's attempt to question Wanger about a brochure sent by Times advertising men to Montgomery city officials soliciting advertisements to further industrial development. He said that the introduction of the document only served to encumber the record.

'CONTINUOUS COURSE'

Nachman maintained that it helped establish that the Times' consistently engaged in soliciting advertising in Alabama.

Attorneys for the city commissioners have sought to show a "continuous course of conduct" on the part of The Times in news gathering and advertising soliciting in Alabama.

Because of the sustained effort to gather news and sell advertising, The Times actually does business in this state, they maintain.

Defense attorneys have held that documents introduced by the state have no value as evidence that the Times engages in business in Alabama.

The three city commissioners are each suing for a half million dollars, charging they were libeled in a Times advertisement seeking funds to defend Negro integration leader Martin Luther King.

The advertisement depicted Negro students as subject to abuse because of their protests against discrimination.

King at the time faced trial for perjury, involving state income tax returns. He was subsequently acquitted by a Circuit Court jury here.

Gov. John Patterson is also suing The Times for a million dollars in connection with the same advertisement.

Four Alabama Negro leaders are also defendants in the suits.

[fol. 1481]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 28

THE MONTGOMERY ADVERTISER JULY 28, 1960

TIMES SUIT TESTIMONY ENDS, ARGUMENTS SET

BY Arthur Osgoode

Testimony was completed before Circuit Judge Walter B. Jones Monday in a hearing to determine whether the New York Times can be sued for libel in a state court.

Montgomery's three city commissioners are each suing the newspaper for $500,000 claiming they were defamed in an advertisement.

Attorneys will make their final arguments Monday on the motion to quash service of the suit on the New York paper.

Attorneys for Commissioners Earl James, L. B. Sullivan and Frank Parks contend that the Times does business in Alabama, and can hence be sued in an Alabama court.

Attorneys for the Times complain that it does not do business in this state, since it does not own or rent property or have employees stationed in Alabama.

Separate exhibits introduced during the third day of the hearing Wednesday mounted to approximately 350. Most of them were introduced by attorneys for the plaintiffs, who sought to show the extent of Times' activities in Alabama through introduction of news stories, expense accounts and other items.

The proceedings were enlivened Wednesday by a brief show of temper.

When Roland Nachman, representing the plaintiffs, cited a Supreme Court decision in support of his argument, Ronald Diana, of the New York firm of Lord, Day and Lord, challenged him.

Diana said that Nachman gave "only half" of the Supreme Court ruling, thus misleading the court.

Nachman heatedly defended his interpretation. Diana left the courtroom to find the court decision in question in the law library of the courthouse.

But while Diana was gone, Nachman revealed that he [fol. 1482] had the case in question with him. But the dispute was never settled. Judge Jones broke in to tell Nachman's colleague, Sam Rice Baker, to resume cross-examination.

The advertisement that brought on the libel suit entered into the testimony earlier Wednesday.

Joseph Wagner, national advertising manager of the Times, said that he knew nothing of the advertisement before it appeared in the paper.

"The ad acceptability department checks the copy . . . it is their responsibility," he said.

Roger Waters, Times national circulation manager, testified to the manner in which the New York paper is distributed in Alabama. Wholesale and retail dealers receive the paper, he said, and subscriptions are paid in advance.

"We pay for all transportation," said Waters.

Cross-examined by Baker, he said that credit is given for unsold papers. The signature of the baggageman is obtained by the newspaper dealer in such cases, he further testified.

John J. McCabe, Times assistant comptroller, testified that no one on the Times payroll resides in Alabama, and that the Times has no office, bank account or property in this state.

He specifically stated that string correspondents are not on the Times payroll, and that no deductions are taken from checks mailed to them. Six or more deductions are made from paychecks of regular Times employees, he said.

McCabe also testified that Alabama advertisers only accounted for 46/1,000s of one per cent of Times advertising revenues in 1959.

Testifying briefly were Advertising Editor Grover C. Hall, Jr. and Montgomery Chamber of Commerce Manager, Paul Fuller.

Hall testified to receiving material soliciting his subscription to the New York Times Index, which is published by the New York paper.

Fuller told of being visited by a Times advertising [fol. 1483] solicitor who sought to sell him a Times advertisement boosting this area as an industrial location.

The libel suit is over a Times advertisement that sought funds with which to defend Negro integration leader Martin Luther King in a trial for perjury. King was acquitted by a Montgomery County jury of lying about his income on a state tax return.

Montgomery's three commissioners charge that the ad, which alleged discrimination against Negro demonstrators, reflected on the way they performed in their office and defamed them.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 29

JULY 20, 1960

THE MONTGOMERY ADVERTISER

DETECTIVE'S SUIT CHARGES TIMES

BIRMINGHAM (AP)—A Birmingham city detective Tuesday filed suit for $100,000 against The New York Times and its reporter, Harrison E. Salisbury.

Detective Joe Lindsey contended in the suit that The Times "Thoughtfully and maliciously" published an article concerning him last April 12.

The suit is based on part of a series of stories under Salisbury's byline dealing with race relations in Birmingham.

Members of the city commissioners of Birmingham and neighboring Bessemer earlier filed similar suits.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 30

JULY 26, 1960

THE MONTGOMERY ADVERTISER

ATTORNEYS CONTEND N Y TIMES DIDN'T DO BUSINESS IN STATE

[fol. 1484] By Arthur Osgoode

Attorneys for The New York Times set out to show in Circuit Court here Monday that the newspaper did not do business in Alabama and hence could not be sued in a state court by Montgomery city officials.

The three Montgomery city commissioners are each suing the Times for $500,000, charging they were defamed in an advertisement that sought to raise money for

the defense of Negro integration leader Martin Luther King.

In the hearing that opened Monday, attorneys representing the city officials introduced a long series of documents designed to show that the New York newspaper engages in the business of gathering news in this state.

One witness occupied the stand from late morning until the hearing recessed, to be resumed Tuesday morning.

Harold Faber, day national news editor of the Times, spent most of his time identifying correspondence with "string" correspondents in Alabama, expense accounts of Times reporters, and news stories originating in this state.

Faber described a "stringer" as a "person working for another newspaper on whom we call for news occasionally."

He said there are three string correspondents in Alabama, including Advertiser State Editor Don McKee. The other two are in Birmingham and Mobile.

He testified that these three correspondents were paid by check for stories they sent in, without the deductions taken out of the paychecks of regular Times employees.

The New York paper, he further testified, does not have a regular news staff correspondent in Alabama, but does have one in Georgia, who handles major news stories in all the Southern states.

Under cross examination by Roland Nachman, Faber conceded that The Times makes an active effort to replace correspondents who quit.

In the ensuing lengthy introduction of documents, Nachman set out to show that the Times frequently engages [fol. 1485] in news gathering in Alabama.

Defense attorneys repeatedly objected to the introduction of the documents as immaterial and irrelevant and too far removed in time to have a bearing on the case.

Representing The Times is the Birmingham firm of Beddow, Embry and Beddow. They were assisted Monday by Louis M. Loeb and Ronald S. Diana of the New York Firm of Day, Lord and Lord, which is retained by the New York Times.

City Attorney Calvin Whitesell and Robert Steiner, III, Sam Rice Baker and Roland Nachman of the firm of Steiner, Crum and Baker, represented the plaintiffs.

The libel suits brought by City Commissioners Earl James, L. B. Sullivan and Frank Parks grew out of an advertisement critical of local police handling of Negro demonstrations.

Among other things, it alleged that the dining hall at Alabama was padlocked during a period of student demonstrations to starve students into submission.

The same advertisement also brought a suit by Gov. John Patterson, who is suing the newspaper and four Alabama Negro leaders for one million dollars.

The arguments made in Circuit Court here Monday would also apply to Patterson's suit.

The Monday hearing was on a motion by The Times to quash service of the suit, its attorneys maintaining that it cannot be properly served according to state procedures since it is a foreign corporation.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 31

THE MONTGOMERY ADVERTISER

AUGUST 6, 1960

JUDGE RULES TIMES SUIT LEGAL HERE

JURIST HOLDS PAPER DOES 'CONTINUOUS' BUSINESS IN STATE

By Arthur Osgoode

[fol. 1486] The New York Times can be sued in a Montgomery court by a city commissioner who claims that he was libeled, Circuit Judge Walter B. Jones ruled Friday.

In dismissing the newspaper's motion to quash service of the complaint against it, Jones found specifically that: "The Times does business in Alabama."

The New York paper had sought to avoid defending its case in an Alabama court, holding that it was an out-of-state corporation that did not engage in business in this state.

But Jones found "an extensive and continuous course of Alabama business activity—news gathering; solicitation of

EXECUTIVE DIRECTOR

Hughes, a Methodist minister, is executive director of the council, an organization with the expressed intent of improving race relations.

After keeping Hughes in the grand jury room throughout the morning and midway through the afternoon, Foreman J. W. Stallings came out and went before Circuit Judge Gardner F. Goodwyn.

Stallings told Goodwyn that Hughes "fully and faithfully answered all questions," and the judge lifted the contempt citation.

Hughes' attorneys said he appeared before the grand jury Tuesday under a new subpoena, which made no mention of the records of the Alabama Council on Human Relations.

An earlier subpoena served on Hughes demanded both his appearance and the presentation of his organization's records. But his attorney said Hughes objected, contending [fol. 1498] the records had no bearing on the case.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 39

THE MONTGOMERY ADVERTISER SEP. 9, 1960

METHODISTS BOOT CLERIC HELD IN JAIL

BIRMINGHAM (AP)—The North Alabama Methodist conference Thursday recalled the credentials of the Rev. Robert E. Hughes who spent last week-end in jail after he failed to satisfactorily answer a grand jury.

The action means that he is no longer a minister of the conference. He still holds a local license in the church.

The conference last year granted Hughes supernumerary relation for one year under the condition that he accept an appointment of a church this year.

Hughes appeared before a Jefferson County Grand Jury last Friday under subpoena demanding records of the Alabama Council on Human Rights.

The minister, executive director of the council, was jailed on a contempt citation after two brief appearances before the jury.

He remained in jail until Tuesday when he appeared before the grand jury again.

The grand jury was investigating reports of racial incidents in the Birmingham-Bessemer area as published in The New York Times last April. The articles carried the byline of Harrison Salisbury.

Deputy Circuit Solicitor Howard H. Sullinger said the grand jury indicted Salisbury on 42 counts of criminal libel.

Hughes' attorney said his appearance before the grand jury this week was under a new subpoena which did not mention records of the Alabama Council on Human relations.

[fol. 1499] After a four-hour session with the grand jury the contempt citation was lifted.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 40

THE MONTGOMERY ADVERTISER AUG. 7, 1960

THE TALK OF THE TOWN
EDITOR THE NEW YORKER MAGAZINE
NEW YORK, N. Y.

The talk of the town concerning you, to borrow your phrase, is that you are an incompetent, punk journalist.

This The Montgomery Advertiser will not illustrate, having waited since your July 16 edition to see if you would redeem the tedious fiction concerning Montgomery and this newspaper.

You dispatched a bearded jazz music critic up here to Montgomery to write about race relations. This citizen had not even purged himself of the lies to which he was party to in The New York Times before he came here to laminate those lies with more lies and what delicate ladies call barnyard, or moo.

advertising; circulation of newspapers and other products."

The ruling continued:

"Likewise, the court finds that to subject the Times to suit in Alabama comports with traditional notions of fair play and the proper administration of justice.

"Plaintiff resides here, and is a public official of the city of Montgomery. If a reputation has a situs, it is here in Montgomery.

"The events occurred largely in Montgomery, and witnesses who have knowledge of the truth or falsity of the events as outlined in the advertisement reside in or near Montgomery."

Jones concluded that the local circuit court "is the appropriate and convenient forum in which to try this action."

Jones also held in his ruling that The Times had also made a "general appearance" in the case, thus waiving its argument against jurisdiction of the local court.

BEYOND QUESTION

Because they questioned jurisdiction of the court over "subject matter," Times' attorneys went beyond the question of court jurisdiction, Jones held.

He also said that The Times had made a "general appearance" in petitioning the Alabama Supreme Court to review Jones' order directing The Times to produce certain documents.

[fol. 1487] During arguments in the hearing before Jones last week, attorneys argued whether the Times carries on sustained activities in this state.

Jones observed that regular staff writers of the Times had spent a combined 153 days in Alabama this year, and that Times advertising salesmen had sold almost $18,000 worth of ads in Alabama between Jan. 1 and April 30, 1960.

He further observed that the New York paper maintains three "string" correspondents in Alabama, who provide news stories. The Times, said Jones, "has made an active effort to maintain a 'stringer' at these three places in Alabama at all times."

News gathering in this state was coordinated by Harold Faber, day national news editor and a witness during the hearing here, Jones also observed.

In closing the 10-page opinion, Jones cited his record as "a staunch advocate and defender of freedom of the press."

"But, he continued, "This freedom and other safeguards of the due process clause do not command the plaintiff to carry his witnesses, his evidence, his counsel and himself more than 1,000 miles to a distant forum to bring his action for alleged damages to his reputation and try his case."

$500,000 Each

Montgomery City Commissioners Earl James, James L. Sullivan and Frank Parks are suing the Times for $500,000 each, claiming that they were libeled in an advertisement. The advertisement was one seeking funds for the court defense of Negro integration leader Martin Luther King, who was later acquitted here on lying about his income.

Jones did not rule on one point raised by attorneys for the local officials last week. They had claimed that The Times does business in Alabama by virtue of its membership in the Associated Press, worldwide news-gathering service.

Their argument was that the AP, in gathering news stories for The Times in Alabama, acts as its agent.

[fol. 1488] Almost all daily newspapers in the United States use AP news stories.

In one of the cases cited by Jones in his ruling, the delivery by mail of a single insurance policy and premium receipts was enough for an insurance company to be deemed by the U. S. Supreme Court to be "doing business" in another state.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 32

THE MONTGOMERY ADVERTISER

AUG. 7, 1960

ATTORNEYS CONTEND: JUDGE'S RULING WILL HINDER APPEAL

By the Associated Press

Attorneys for Montgomery city commissioners contend a judge's ruling may prevent The New York Times from appealing to federal court if it loses any of three libel suits pending in state court here.

The decision handed down by Circuit Judge Walter B. Jones in state court Friday held that the Times can be sued here.

It was based on the finding that the newspaper does business in Alabama, but Jones' ruling that he has jurisdiction to try the libel suits also involved a technical legal question.

The judge, in his 10-page written decree, said Times attorneys in effect waived the question of jurisdiction by making what lawyers call a general appearance in his court.

Jones explained that the newspaper attorneys could have made—in the language of the law—a special appearance by pleading merely that Alabama courts have no right to try The Times.

But they went further, the judge explained, and argued that Jones had no jurisdiction over the subject matter of the libel suits. That constituted a general appearance, the court said.

Jones also held that The Times in effect surrendered to his jurisdiction by going to the State Supreme Court in an [fol. 1489] unsuccessful attempt to keep from having to produce certain records in the pretrial hearing involving the issue of jurisdiction.

The Times' attorneys said no decision has been made on a possible appeal from Jones' ruling.

Friday's decision involved three libel suits filed by Montgomery city commissioners seeking $500,000 each. They resulted from a full-page advertisement in the Times criticizing the handling of recent Negro student demonstrations in Montgomery.

Attorneys for the commissioners, headed by Sam Rice Baker, of Montgomery, contended that Jones' ruling on jurisdiction, if upheld, removed any federal question which would be appealed to the U. S. Supreme Court if the libel suits resulted in a judgment against the newspaper.

But it would not stop the Times from trying to take it to the Supreme Court, and letting that tribunal decide.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 33

THE MONTGOMERY ADVERTISER

AUG. 26, 1960

JEFFERSON CALLS TIMES REPORTER

BESSEMER (AP)—Deputy Circuit Solicitor Howard Sullinger says that if conditions described in New York Times articles are found to exist in Bessemer, a grand jury will seek to remedy the conditions.

Sullinger said the grand jury plans to examine contacts made by Harrison Salisbury in Birmingham in gathering material for the articles.

The attorney said also that he has asked Salisbury to testify before the grand jury next week.

He said he mailed letters Wednesday to Salisbury and to Turner Catledge, Times managing editor, asking that Salisbury appear.

[fol. 1490]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 34

THE MONTGOMERY ADVERTISER SEP. 3—1960

U.S. JUDGE DEALS TIMES LEGAL BLOW

BIRMINGHAM (AP)—U. S. District Judge H. H. Grooms Friday upheld the service of libel suits in Alabama totaling $3,100,000 against the New York Times.

The suits—seven of them in all—grew out of articles published in The Times last April dealing with race relations in the Birmingham area.

The articles carried by the byline of Harrison Salisbury, who was named co-defendant.

The ruling by Judge Grooms means the cases will be tried here. A defense attorney said no appeal is planned at this time.

Suits seeking $500,000 each were filed by Birmingham City Commissioners James W. Morgan, Eugene Connor and James T. Waggoner, and Bessemer City Commissioners Jess Lanier, Raymond Parson and Herman Thompson. In addition, Joe Lindsay, a Birmingham city detective filed suit asking $100,000.

The suits were served on the Times, contending it is an out-of-state corporation doing business in Alabama, and on two parttime correspondents of the Times in Alabama, contending they were agents of the firm.

Judge Grooms dismissed the service of the suits on the two part time correspondents, Don McKee of Montgomery and John Chadwick of Birmingham, saying neither of them was an agent of the Times.

Attorneys for The Times argued in two days of hearings that the Times does not do business in Alabama and therefore could not be served with a suit.

The Times also contended that that the cause of action did not occur in Alabama. The Times' attorney said the

cause of action was publication of the articles in New York, not Salisbury's gathering of information in Alabama.

[fol. 1491] JUDGE JONES HANDED DOWN SIMILAR RULING

Circuit Judge Walter B. Jones, in a similar ruling here Aug. 5 said The Times could be sued in Alabama. This ruling was on the separate suits filed by Montgomery's three city commissioners, each for $500,000, charging they were defamed in an advertisement soliciting funds for the defense of Martin Luther King in his income tax trial here.

"The Times does business in Alabama," Judge Jones decided after several days of testimony. The paper held that it was an out-of-state corporation and did not engage in business here.

Gov. John Patterson has entered a $1 million libel suit against The Times arising out of the same advertisement.

A United Press International story in the Alabama Journal Thursday stated that "Federal Judge Frank M. Johnson, Jr., has ruled The Times could be sued in Alabama. His decision resulted from libel suits filed against the paper by Gov. Patterson and Montgomery City Commissioners." The statement is in error. The ruling referred to was made by Judge Walter B. Jones in one of the three separate cases filed by Montgomery City Commissioners.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 35

THE MONTGOMERY ADVERTISER

SEP. 3, 1960

METHODIST LEADER JAILED FOR REFUSING TO ANSWER

BESSEMER (AP)—A witness was jailed Friday for refusing to give satisfactory answers in a grand jury investigation of racial conflict in the Birmingham area reported in The New York Times.

[fol. 1492] This was the second day of the investigation delving into accounts of racial troubles published in The Times last spring under the byline of Harrison Salisbury.

In a quick sequence of events;

The Rev. Robert E. Hughes appeared before the grand jury for about 15 minutes when first called.

Deputy Circuit Solicitor Howard Sullinger came out of the grand jury room and said he would institute contempt proceedings against Hughes at the request of the grand jury's questions.

Midway through the contempt proceeding was stopped and Hughes went back to the grand jury.

BACK OUT AGAIN

Then suddenly, Hughes was back out again, facing contempt proceedings again.

Circuit Judge Gardner F. Goodwyn ordered Hughes jailed "until you purge yourself."

This means he could be held indefinitely, until he answers to the satisfaction of the grand jury.

Sullinger said he understood that Hughes, who was jailed without bond, could request bond if the grand jury adjourns without Hughes satisfying them with his answers.

Hughes, a Methodist minister, is executive director of the Alabama Council on Human Rights, an organization with the expressed intent of improving race relations.

RECORDS SOUGHT

Hughes appeared before the grand jury under a subpoena demanding that he bare the financial records of his organization.

He failed in appeals to Circuit Court and the Alabama Supreme Court earlier seeking dismissal of the order for his records.

He contended the records had no bearing on the case.

Others who went into the grand jury room were Mayor Jess Lanier and Police Chief George Barron of Bessemer and Mayor Claude Smithson and Police Chief Tom Ward of Fairfield.

Officials of several other small towns in the area also [fol. 1493] appeared.

NO REPORT

In late afternoon the grand jury recessed until 9 A. M. Tuesday without issuing a report.

Sullinger said earlier he requested the presence of Salisbury, but he said attorneys for Salisbury told him the reporter would not appear before the grand jury.

A preliminary investigation developed a list of contacts made by Salisbury during his visit in the area, Sullinger said, along with a list of telephone calls he made.

Before the grand jury started its probe, Sullinger said:

"If conditions are described in the Times articles are found actually to exist, our grand jury will do all it can to remedy these conditions.

"If they don't exist, our county and city officials and every law enforcement agency in the county have been libeled and slandered."

Seven suits seeking a total of $3,100,000 damages have been filed against the Times in connection with the articles.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 36

THE MONTGOMERY ADVERTISER

SEP. 4, 1960

BESSEMER (AP)—A Methodist minister jail here is awaiting the decision of the U. S. Supreme Court in his appeal for dismissal of a grand jury subpoena against him.

The Rev. Robert E. Hughes was jailed by Circuit Court Judge Gardner F. Goodwyn Friday for contempt of a grand jury.

However, the appeal to the Supreme Court was issued prior to the contempt citation and is an effort to have the order for the subpoena dismissed.

[fol. 1494] James L. Shores, Jr. an attorney for Hughes, explained that he is seeking to have the subpoena dismissed on grounds that it was issued illegally.

However, in Washington, Supreme Court aides said no immediate action was scheduled. The request is pending with Justice Hugo Black.

Hughes was jailed during the second day of a grand jury investigation into accounts of racial troubles in the Birmingham area as published last spring in the New York Times.

Shores said Hughes was told to appear before the grand jury with records of the Alabama Council on Human Rights, an organization with the expressed intent of improving race relations. The minister is the group's executive director.

Shores said the records of the group contained names of individuals who would be harmed with the publication of their identities.

Hughes contended, through his attorneys, that the records had no bearing on the suits against The New York Times.

Hughes had spent only a brief time with the grand jury Thursday when Deputy Circuit Solicitor Howard Sullinger announced that he would institute contempt proceedings at the request of the grand jury.

Contempt proceedings were stopped when Hughes' attorneys said he would answer the grand jury's questions.

Hughes returned to the jury room, but suddenly came back out.

Goodwyn had ordered him jailed "until you purge yourself."

Under Alabama law, the minister could have been released under bond had the grand jury adjourned. However, the grand jury recessed, instead, until Tuesday morning.

[fol. 1495]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 37

THE MONTGOMERY ADVERTISER SEP. 6, 1960

JURY MEETS AGAIN TODAY IN RACE STUDY

BESSEMER (AP)—A Jefferson County Grand Jury investigating the New York Times' account of racial conflict in the Birmingham area was scheduled to reconvene Tuesday.

A Methodist minister, jailed in connection with his appearance before the grand jury, apparently will remain in jail here at least until that time.

The Rev. Robert E. Hughes was jailed Friday when he refused to give satisfactory answers to the grand jury. He is executive director of the Alabama Council of Human Relations.

The subpoena demanded financial records of the group.

The minister was ordered jailed by Circuit Judge Gardner F. Goodwyn.

Hughes' attorneys have asked the U. S. Supreme Court to hear a plea to quash the subpoena calling Hughes to appear before the grand jury. So far the high court has taken no action. The attorneys claim Hughes was subpoenaed illegally.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 38

THE MONTGOMERY ADVERTISER SEP. 7—1960

JEFFERSON JURY INDICTS TIMES WRITER FOR LIBEL

BESSEMER (AP)—A grand jury Tuesday indicted Harrison Salisbury of the New York Times on 42 counts of criminal libel growing out of articles published about race relations in the Birmingham-Bessemer area.

Deputy Circuit Solicitor Howard H. Sullinger said each [fol. 1496] of the counts resulted from a series of stories in the Times last April.

The articles, carrying Salisbury's byline, dealt with racial conflict in the area.

Sullinger said he didn't know yet whether extradition would be sought.

A State Supreme Court source in Montgomery said criminal libel would be an extraditable offense. But the source expressed doubt that the governor of Salisbury's home state would grant extradition if Alabama requested it.

Sullinger said the indictment was filed with Circuit Court Judge Gardner F. Goodwyn, Jr., and that the court closed for the day soon afterward. Goodwyn said he could neither confirm nor deny the indictments because of an Alabama law prohibiting official statements about indicted persons prior to their arrest.

Sullinger declined to discuss the individual counts on the telephone.

The county grand jury began investigating The New York Times stories last Thursday. It recessed last Friday and resumed deliberations Tuesday.

Court officials said the processing of the indictment against Salisbury would begin Tuesday in the Bessemer sheriff's office.

The first of the two New York Times articles which prompted the grand jury investigation said:

"If fear and terror are common in the streets of Birmingham, the atmosphere in Bessemer, the adjacent steel suburb, is even worse."

CITED ESPY CASE

The story went on to mention Barbara Espy, a 19-year old white woman who complained that she was flogged by white men who accused her of dating Negroes. She denied the accusation. Four white men were indicted on assault and battery charges but have not come to trial.

The Times article also made reference to the reported attack in Bessemer on the mother and sister of a Negro student who participated in the so-called "prayer for freedom."

[fol. 1497] Before the grand jury started the investigation Sullinger commented:

"If conditions as described in the Times articles are found actually to exist, our grand jury will do all it can to remedy those conditions."

REQUIRE ANSWER

"If they don't exist our county and city officials and every law enforcement agency in the county have been libeled and slandered. If this is libel and slander someone should be required to answer for it."

Sullinger said the maximum penalty in Alabama on conviction of criminal libel is a $500 fine and six months in prison.

The indictment was reported shortly after a minister, who was jailed over the weekend, was freed of a contempt charge.

The minister was released from jail following a four-hour session with the grand jury Tuesday.

His attorneys claimed a victory for the Rev. Robert E. Hughes, saying he went to jail for his refusal to open records of the Alabama Council on Human Relations, and that he never did open the records.

This galoot, Nat Hentoff, was one of the signers of the ad in The Times concerning Montgomery. The Times was forced to make formal acknowledgement that the ad contained lies and is now being sued therefor.

Unpurged of his perjury in that connection and untaught by the experience, this Hentoff went to Mr. Cliff Durr here to get the truth about Montgomery. Durr was an implausible if not preposterous source of information, for he is as hipped on race-mixing as the cranks who oppose fluoride in the water.

Durr is intellectually gifted, but he is credely subjective in his viewpoints. To have pilloried this newspaper and this city on Durr's emotional, unsupported testimony was outrageous. You will be shamed to know that even friends and fellow radicals of Durr take that view.

[fol. 1500] I will render just two examples of the crude lies in your "A Conversation In Alabama". You quote Durr as saying:

"You can see some of the complications just by following The Montgomery Advertiser," Mr. (Durr) said, lighting his pipe. "The father of the present editor was a wonderful small-town newspaperman. He won a pulitzer Prize after the first war for fighting the Klan, and for a time his son continued attacking the Klan. But after 1954 the paper's line began to waver. It said the members of the White Citizens Council were different from Klansmen; they were orderly—legal . . ."

The Advertiser has never wavered for a day or an issue in its opposition to the Klan. It made it an explosive issue in the last race for governor. The files are fat with attacks on the Klan. Now and always we refer to the Klan as "trash".

At first The Advertiser was indeed hostile to the Citizen Councils. But then we saw that they were open and correct in their activities, as well as impotent. As an honest newspaper, there was nothing to do but correct ourselves and tell the truth—which would be a salubrious exercise for The New Yorker.

Hentoff then quotes Durr as saying that after the bat-swinging incident "pressure on the paper" became such that,

following a spirited outburst by Allen Rankin, Jr., The Advertiser went silent.

That's a lie.

The truth is that The Advertiser made what was considered a shattering attack on the policies and the conditions which made possible the bat-swinging incident after the Rankin letter. This attack was as destructive and harsh as the editor could fashion.

You are not going to sued for this and the rest, for the court dockets are now congested with the suits against the mendacious New York Times.

We are content to confront you with your mess and the damage to our repute.

If you're worth a damn as a journalist, you will accept this challenge to send a man here and clean the Augean stable which was your July 16 reporting on Montgomery and The Montgomery Advertiser.

—EDITOR, THE ADVERTISER

[fol. 1501]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 41

THE MONTGOMERY ADVERTISER SEP. 9, 1960

WAY CLEARED FOR APPEAL BY N.Y. TIMES

BIRMINGHAM (AP)—The way was cleared Thursday for The New York Times to appeal a federal court ruling that it can be served with libel suits totaling $3,100,000 in Alabama.

Attorney Roderick MacLeod said he will ask the Fifth Circuit Court of Appeals in New Orleans to take an appeal. He said he hopes to complete the application Friday.

The suits grew out of articles published in The Times last April dealing with race relations in the Birmingham-Bessemer area. The articles carried the by-line of Harrison Salisbury.

Attorneys for The Times challenged service of the suits.

U. S. District Court Judge H. H. Grooms ruled last week that The Times could be served with suits in Alabama in this case. He said stories that led to the suits were a result of "work or service in the state of Alabama by Mr. Salisbury as an employee of the New York Times Co."

SPEED TERMINATION

Federal statutes prohibited an appeal from the original ruling but Grooms amended this Thursday. He said the cases involve a question which, through appeal, might speed up their termination.

A court source said the question involves application of a section of the Alabama Code. The section provides that any foreign corporation not qualified to do business in the state and does business, service or work in the state can be served with a process through the secretary of state providing the cause of action arose out of doing such business, service or work or was an incident thereto.

SEEK $500,000

Suits seeking $500,000 each were filed by Birmingham City Commissioners James W. Morgan, Eugene Connor and James T. Waggoner, and Bessemer City Commissioners Jess Lanier, Raymond Parson and Herman Thompson, Joe [fol. 1502] Lindsay, a Birmingham city detective, filed suit asking $100,000.

The suits were served on the Times, contending it is an out-of-state corporation doing business in Alabama, and on two part-time correspondents of the Times in Alabama, contending they were agents of the firm.

Grooms dismissed service of the suits on the two part-time correspondents, saying neither was an agent of the Times.

A Jefferson County grand jury this week indicted Salisbury on 42 counts of criminal libel in connection with the series of articles.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 42

THE MONTGOMERY ADVERTISER SEP. 10, 1960

OUSTED CLERIC STILL VAGUE ABOUT FUTURE

BIRMINGHAM (AP)—Robert E. Hughes, stripped of his ministerial status in the Methodist Church Thursday, said Friday his "plans for the future are still in the future."

Hughes, 32, was the Methodist minister jailed over last week-end for contempt of a grand jury investigating reports of racial conflict in the area as published in The New York Times.

Apparently Hughes' loss of ministerial credentials is unrelated to his difficulties with the grand jury.

Hughes' credentials were recalled under a conference rule prohibiting ministers from taking fulltime appointments outside the church in place of pastorates.

NOTIFIED LAST YEAR

The North Alabama Methodist Conference notified Hughes last year it would take back his ministerial credentials if he did not accept a pastorate.

Hughes, executive director of the Alabama Council for [fol. 1503] Human Relations, has not taken a church position.

The council, an organization with the expressed intent of bettering race relations, has no connection with the Methodist Church.

Hughes became executive director of the council six years ago, following one year as a pastor.

"I deeply regret this has happened," Hughes said.

Regarding a possible appeal for reinstatement, Hughes said he hadn't yet decided.

As of now, he still has a license as a local preacher—a rank given to laymen who are authorized to preach on occasion.

NO BEARING

A spokesman for the North Alabama Conference said the grand jury action against Hughes had no bearing on the conference's decision.

Hughes was jailed on the contempt charge Sept. 2, following two brief appearances before the grand jury.

He said he had been subpoenaed to appear before the grand jury with records of the Alabama Council on human relations, and that he refused to open the records of the council.

He remained in jail over the Labor Day weekend. Then, when the grand jury reconvened Tuesday, he was served with another subpoena—this time ordering only his appearance, and not requiring the council's records.

Hughes then went before the grand jury for about four hours, and the contempt charge was lifted.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 43

THE MONTGOMERY ADVERTISER SEPT. 10, 1960

TIMES APPEALS RULING ALLOWING ALABAMA SUIT

NEW ORLEANS (AP)—The New York Times Friday asked the U.S. Fifth Circuit Court of Appeals here to permit it to appeal a U.S. District Court ruling holding [fol. 1504] that the newspaper can be sued in Alabama.

At the same time, the Times asked that seven libel suits against it be consolidated in the appeal.

U. S. Dist. Court Judge H. H. Grooms ruled last week the Times could legally be served with suits in Alabama.

The libel suits, which stem from articles in the Times last April dealing with race relations in the Birmingham-Bessemer area, total $3,100,000.

The Times had to ask permission to appeal because the case has not yet gone to trial on its merits. There is no time limit under which the appellate court must act to grant or turn down the request for appeal.

The Times, in its petition for appeal, pointed out the appellate court would save the time and expense of seven libel trials, should it decide to hear and then uphold the Times appeal.

The newspaper is questioning validity of service of summons against it, reporter Harrison Salisbury, and others.

The summons were served on Alabama's secretary of state who then forwarded it to New York via registered mail.

This was done following state law which says any foreign corporation not qualified to do business in the state can be served with a process through the secretary of state providing the cause of action arose out of doing such business.

The Times, in its petition, said the question of validity of service could have far reaching effect on the operation of newspapers and could operate to seriously curtail activities of a paper's newsgathering activities.

Judge Grooms, in an amended order, said the case involves "a controlling question of law as to which there is ground for differences of opinion." He said an immediate appeal might advance the ultimate termination of the case.

A Jefferson county grand jury this week indicted Salisbury on 42 counts of criminal libel in connection with the series of articles.

Three Birmingham officials and three Bessemer city offi- [fol. 1505] cials have filed six $500,000 suits against The Times. A Birmingham city detective has filed an additional $100,000 suit.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 44

THE MONTGOMERY ADVERTISER SEP. 11, 1960

CONTROVERSIAL CLERIC GIVEN AFRICAN DUTY

BIRMINGHAM (AP)—The Rev. Robert E. Hughes Saturday was restored to his ministerial status in the North Alabama Methodist Conference and will be transferred to Africa.

The minister's credentials were recalled earlier this week under a conference rule prohibiting ministers from taking fulltime appointments outside the church in place of pastorates.

Hughes became executive director of the Alabama Council for Human Relations six years ago and has not taken a church.

The conference notified him last year it would recall his ministerial credentials unless he accepted a pastorate.

Prior to the action Saturday Bishop Bachman G. Hodge told the conference that if Hughes was restored to ministerial status he would be transferred immediately to the Southern Rhodesia Conference in Africa.

Hodge said the national Methodist Board of Missions said that Bishop Ralph E. Dodge of the Southern Rhodesia Conference would accept Hughes for immediate assignment.

The minister, a native of Gadsden, Ala., was accepted as an elder in the North Alabama Conference in 1955, the year he became executive director of the human relations council.

The organization has the expressed intent of improving race relations. It has no connection with the Methodist Church.

Hughes, 32, was jailed last weekend for contempt of a Jefferson County grand jury investigating reports of racial [fol. 1506] conflict in the area as published in The New York Times.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 45

THE MONTGOMERY ADVERTISER Sep. 25, 1960

STATE FINDS FORMIDABLE LEGAL CLUB TO SWING AT OUT-OF-STATE PRESS

By Rex Thomas AP Staff Writer

State and city authorities have found a formidable legal bludgeon to swing at out-of-state newspapers whose reporters cover racial incidents in Alabama.

A state court judge at Montgomery and a federal judge at Birmingham have ruled that The New York Times can be sued in Alabama courts.

And a Grand Jury at Bessemer, near Birmingham, indicted a Times reporter, Harrison E. Salisbury, on 42 counts of criminal libel for a series of stories he wrote on racial conditions.

COULD APPLY TO OTHERS

The two court decisions, and the Grand Jury action, dealt only with The Times and Salisbury. But they could apply to other newspapers as well.

Another paper could be sued for libel—as The Times has been—in Alabama Courts.

And another reporter could be indicted for criminal libel if a Grand Jury concluded—as the jury at Bessemer did—that his writing "may tend to provide a breach of the peace."

Seven libel suits seeking damages of $3.1 million have been filed in federal court in Birmingham because of the Salisbury stories. Four others, on file in State court at Montgomery, grew out of a full-page advertisement in the New York paper.

In preliminary hearings in both courts, Times attorneys were overruled in their contention that the newspaper could [fol. 1507] be sued only in New York, where it is published.

For different reasons, because the circumstances were different, Circuit Judge Walter B. Jones in Montgomery and U.S. District Judge H. Hobart Grooms of Birmingham said the suits can be tried in Alabama.

DOES BUSINESS HERE

Jones ruled that the newspaper does business in Alabama and, therefore, is subject to suit in state court. He based this on his finding that the Times:

1. Gathers news in Alabama through staff reporters and part-time correspondents.
2. Solicits advertising in the state.
3. Sells newspapers in Alabama.

Under the same set of circumstances, the decision probably would apply to another newspaper—if the court found that it does business in Alabama.

Three of the suits in state court, for $500,000 each, were filed by Montgomery Mayor Earl James, and City Commissioners Frank Parks and L. B. Sullivan. The other, asking $1 million, was filed by Gov. John Patterson.

They grew out of a full page advertisement in The Times soliciting funds for the defense of the Rev. Martin Luther King, Jr. when he was facing trial on charges of falsifying state income tax returns. The Negro integration leader later was acquitted by an all white jury in state court.

PUBLIC RIDICULE

The ad criticized the handling of student demonstrations last spring at Alabama State College, a Negro school in Montgomery. Patterson and the city officials complained they were held up to public ridicule and embarrassment by some of the charges in the advertisement.

Also named as defendants in all four libel cases were four Alabama Negro leaders whose names appeared as sponsors of the ad. The Negroes are the Rev. F. L. Shuttlesworth of Birmingham, the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr. of Montgomery, and the Rev. [fol. 1508] J. E. Lowery of Mobile.

Patterson's suit added King as a sixth defendant.

The question of doing business in Alabama was not involved in Judge Grooms' ruling in Birmingham. He based his findings on the contention that Salisbury's stories resulted from "work" or "service" he performed while in Alabama gathering information.

TIMES CONTENTION

Times attorneys contended the libelous action, if there was any, was committed when the stories were published in New York and not because of the work done by the reporter in Alabama.

Both decisions, by Jones and Grooms, are subject to reversal in higher courts, and the New York paper has already asked the U.S. 5th Circuit Court of Appeals for permission to appeal.

Under federal rules, a permit is necessary before an appeal can be filed, since none of the libel suits has been tried on its merits.

But unless and until they are overturned, the decisions handed down by Jones and Grooms are binding.

And under the reasoning followed by the federal judge, any out-of-state paper that assigns a reporter to cover a story in Alabama could be held accountable in Alabama courts.

Six of the suits growing out of the Salisbury series ask for $500,000 each and were filed by Birmingham Mayor James W. Morgan and Commissioners Eugene Connor and James T. Waggoner and Bessemer City Commissioners Jess Lanier, Raymond Parson and Herman Thompson.

'DYNAMITE OF RACISM'

The other, for $100,000 was filed by Birmingham City Detective Joe Lindsay.

Salisbury pictured Birmingham as a city filled with "emotional dynamite of racism"; as a city where telephones were tapped and mail intercepted and opened, and as a city where "the eavesdropper, the informer, the spy have become a fact of life."

The Grand Jury which indicted Salisbury took a close look at the series he wrote, and Deputy Circuit Solicitor Howard Sullinger promised to recommend speedy remedial action if the conditions Salisbury described were found [fol. 1509] to exist.

The newsman himself was invited to testify, but declined.

Because of criminal libel being a misdemeanor with a maximum penalty of six months in jail and a $500 fine on each count, there is doubt whether Salisbury could be forced to return to Alabama to answer the charges. Even if he could be extradited, Gov. Nelson A. Rockefeller of New York would have to consent.

NEED NOT APPEAR

Salisbury is a defendant in all seven of the libel suits on file in Birmingham, but court officials say he will not have to appear in person if and when they are tried.

If he did, he might subject himself to arrest on the criminal libel indictment. But again, he might be immune to arrest as long as he is in court as a defendant. Sullinger, declined to speculate on that question.

Neither would the prosecutor disclose the details of the 42 counts in the indictment. He said they must be kept secret, under Alabama law, until the defendant is in custody and bond isseet.

No date has been fixed for trial of the libel suits in Birmingham because of the pending request for an appeal. Those in Montgomery are on the Circuit Court docket for October, but they may be continued at a later term.

Before indicting Salisbury, the Bessemer Grand Jury had a runin with a Methodist minister, The Rev. Robert Hughes, who has taken an active part in racial affairs as executive director of the Alabama Council on Human Relations. He spent four days in jail for refusing to divulge the names of members of his organization, whose expressed purpose is the betterment of race relations in Alabama.

CREDENTIALS RECALLED

Later, Hughes' credentials as a minister were recalled by the North Alabama Methodist Conference but the conference said it had nothing to do with the Grand Jury investigation.

The action was taken, the conference said, because Hughes had failed to assume the pastorate of a church. [fol. 1510] Still later, he was reinstated as a minister and transferred to the Southern Rhodesia Conference as a missionary to Africa. He said he welcomed the transfer.

Whether Hughes was one of the persons Salisbury talked to while in Birmingham was not made known.

In Circuit Court of Montgomery County, Alabama

Defendant's Exhibit No. 46

THE MONTGOMERY ADVERTISER - SEP. 22, 1960

TIMES LOSES BID TO DELAY LIBEL TRIALS

Attorneys for the New York Times have lost their bid to put off libel suits by Montgomery's three city commissioners until next January.

Circuit Judge Walter B. Jones Wednesday turned down the motion to delay the trials, now on the court docket for Oct. 31.

The New York Times is being sued by Commissioners Earl James, L. B. Sullivan and Frank Parks for $500,000 each.

The three city officials say they were libeled in an advertisement that sought funds for the legal defense of integration leader Martin Luther King.

They say that the advertisement, which alleged that oppression had been used against Negro students at Alabama State College, defamed them and pictured them as derelict in the discharge of their duties.

REJECTED ARGUMENTS

Judge Jones Wednesday also rejected arguments by attorneys for the city commissioners that the New York paper be forced to answer questions on the truth or falsity of statements appearing in the Times advertisement.

It is up to a jury to decide whether the statements are true, Jones ruled. But he also ruled that the Times can [fol. 1511] be forced to whether it contends that the statements are true.

Local attorneys Sam Rice Baker and Roland Nachman, representing the plaintiffs, had argued that the questions included in their interrogatories had a bearing on whether punitive damages might be awarded, since they related to the mental attitude of the defendant and the question of whether malice was involved.

FOR JURY

Roderick MacLeod and Eric Embry of Birmingham, attorneys for The Times, contended that the question of the truth of the statements was for the jury to decide.

They also argued that they should not be forced to reveal what efforts had been made to check the truth of the statements in the advertisement.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 47

THE MONTGOMERY ADVERTISER JUN 8, 1960

ISSUE OF BACK ISSUES ARGUES IN NEW YORK TIMES SUIT HERE

Whether the New York Times should be forced to bring back issues of daily newspapers and other documents relating to advertising and other business dealings in Alabama was argued before Circuit Judge Walter B. Jones here Tuesday.

Roland Nachman, member of the legal firm of Steiner, Crum and Baker, representing Montgomery city commissioners in their libel suit against the New York newspaper, maintained the records were necessary to attorneys for the plaintiffs.

Eric Embry, representing the New York Times, called the request for documents a "fishing expedition."

LIBRARY COPIES

He argued that attorneys for the city commissioners could persue copies of the Times at the local library and [fol. 1512] elsewhere. And he maintained that other documents were described so vaguely that the newspaper would not know what was required.

He specifically maintained that The New York Times was not doing business in Alabama by virtue of news stories emanating from this state.

"News stories about or relating to the place," he said, "are not doing business."

Nachman, on the other hand, argued that "We have the right to discovery."

He said that daily issues of the Times for more than three years were needed to show whether the New York paper had systematically engaged in gathering news from Alabama.

RULING PROMISED

"If a newspaper systematically gathers news in a state, it does business there," he said.

Judge Jones promised a ruling in the matter in "two or three days."

The suit against the New York Times was filed by Montgomery's three city commissioners following an advertisement that sought funds to aid integration leader Martin Luther King in his court defense against perjury charges here.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 48

THE MONTGOMERY ADVERTISER MAY 16, 1960

N. Y. TIMES RETRACTS TWO AD PARAGRAPHS

NEW YORK (AP)—The New York Times, acting on a protest by Gov. John Patterson of Alabama, Sunday night retracted part of a recent paid advertisement of "The Committee to Defend Martin Luther King And The Struggle For Freedom In The South."

The advertisement, published in The Times March 29, bore the names of a number of actors, writers, entertainers, [fol. 1513] clergymen and others prominent in public life.

In its statement The Times said:

"Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting and correcting any errors or misstatements which may ap-

pear in its columns, herewith retracts the two paragraphs complained of by the governor.

A letter sent by the governor May 9 called for the retraction on grounds that the advertisement charged him with "grave misconduct and of improper actions and omissions" as governor and ex-officio chairman of the state board of education.

The Times said the paid ad was received in the normal course of business and does not reflect Times editorial judgment or opinion.

Stating that it never intended to suggest any such charge by its publication, the paper said:

"To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, the New York Times hereby apologizes to the Hon. John Patterson therefor."

"The two retracted paragraphs are:

"In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the state capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities, by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

"Again and again the southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury' —a felony under which they could imprison him for 10 years.

Gov. Patterson was reported late Sunday night to be [fol. 1514] out of town and not immediately available for comment. Press Secretary Harry N. Cook said Patterson was in Birmingham where he was to address the Committee of One Hundred.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 49

THE MONTGOMERY ADVERTISER AUG. 2, 1960

JONES STUDIES TIMES MOTION TO SHIFT SUIT

By Arthur Osgoode

Terming the case one of the most interesting he has heard in years, Circuit Judge Walter B. Jones Monday took under advisement the question of whether one of the world's leading newspapers can be sued for libel in an Alabama Court.

The New York Times has sought to prove through its attorneys that it is an out-of-state corporation, and that Montgomery's three city commissioners must sue it in New York courts.

The big question in the hearing ended by final arguments Monday is roughly this: Just how broadly does the U.S. Supreme Court interpret the concept of "doing business."

SITE CHALLENGED

The hearing itself was over a motion on the part of the defendant newspaper to have the court declare that it cannot be properly served with the complaint against it in Alabama.

Roland Nachman and Sam Rice Baker, members of the local legal firm of Steiner, Crum and Baker, Monday set forth their arguments as to why the New York Times should be sued here by Commissioners Earl James, L. B. Sullivan and Frank Parks.

Nachman said the question is whether a plaintiff "has to go 1200 miles away" to have his grievance against a firm heard.

[fol. 1515] He urged that the New York Times "carries on significant activities" in Alabama, and hence does business in the state.

He pointed to visits by Times News writers, sales of advertising to Alabama groups, and the fact that the Times

has three "string correspondents" in this state that furnish it with Alabama news.

SALE OF INDEX

These activities, along with others involving circulation and the sale of the New York Times Index, constitute a sustained and systematic business activity, Nachman held.

Baker held that The Times attorneys had in effect conceded that they could be tried in state courts by making a "general appearance."

This phrase means that The Times attorneys went beyond the special purpose of fighting the issue of state court jurisdiction, and went into matters pertaining to the actual libel charges.

Baker also pointed to what he described as close relations between The Times and its "stringers."

When it sought to determine whether the advertisement over which it is being sued contained inaccuracies, said Baker, it gave this "super-delicate" task to Don McKee, Advertiser state editor and local Times correspondent.

Rod MacLeod, of the Birmingham firm of Beddow, Embry, and Beddow, argued on the other side that "state lines would virtually cease to exist" so far as court suits are concerned if Judge Jones rules against The Times.

The Birmingham firm of which MacLeod is a member is representing The Times in the local suit.

MacLeod argued that the New York paper gets only a minute part of its advertising and circulation revenues from Alabama.

Since it maintains no office, bank account, or real estate and has no regular employes in this state, it does not do business in Alabama on a regular basis, said MacLeod.

He argued that The Times has "no substantial part of its corporate functions" in Alabama and hence is not liable [fol. 1516] to suit in state courts.

Also arguing against the propriety of the suit in Alabama was Ron Diana, of the New York firm of Lord, Day and Lord.

Diana went to the constitutional issues in the case, arguing that such a suit would violate the rights of The Times as a corporation.

CASES CITED

Both Diana and Nachman cited numerous cases to support their opposing arguments.

The suit itself is over an advertisement in The Times which sought funds to defend the Rev. Martin Luther King in his trial here for falsely reporting his income in a state income tax return. He was acquitted by a local jury.

The three commissioners charge that they were damaged by the advertisement, since it implied that there was denial rights and that they were derlict in protesting the rights of local Negro demonstrators. Each is asking $500,000.

Judge Jones is expected to rule on the case within a week to 10 days.

Jones' ruling in the case may decide whether other similar suits will be pressed. Gov. John Patterson has sued The Times for a million dollars over the same advertisement that brought the suit by the local city officials.

Still other suits could be tried over a story by Harrison Salisbury dealing with the racial situation in Birmingham, if the Times is held to be amenable to suit in state courts.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 50

THE MONTGOMERY ADVERTISER Oct. 29, 1960

N.Y. TIMES LOSES BID TO FEND OFF LIBEL SUIT

By Arthur Osgoode

Legal arguments against a libel suit by Montgomery city [fol. 1517] commissioners were brushed aside by Circuit Judge Walter B. Jones Friday.

Turning thumbs down on attorneys for The New York Times who argued that an advertisement appearing in the paper did not libel the local officials, Jones set the trial for 10 a. m. Tuesday.

The advertisement out of which the suits arose was published on March 29.

Seeking funds for the defense of the Rev. Martin Luther King in his then-impending trial for false statements on a state tax return, the ad charged oppression of Negro students at Alabama State College.

'Students Expelled'

Among other things, it said that student leaders were expelled after a Negro group sang "America," on the steps of the Alabama Capitol.

Afterwards, the ad continued, police ringed the campus here with guns and tear gas, and the student lunchroom was closed to starve the demonstrators into submission.

Montgomery's three city commissioners—Mayor Earl James, Frank Parks and L. B. Sullivan—sued for $500,000 each, asserting that they were defamed and that the ad pictured them as derelict in the performance of their duties.

Gov. John Patterson also brought suit over The Times ad, asking for a million dollars.

Birmingham attorney Eric Embry, representing The Times, Friday argued that the suit was improper in that it joined three improper offenses in one count by listing Montgomery, New York City, and all of Alabama as places in which the alleged libel took place.

FURTHER MAINTAINS

Embry further maintained that the complaint failed to show that the alleged libel concerned the plaintiff, or that he had suffered damage from the statements in the advertisement.

"The general public could have been referred to," he said, in pointing out that the advertisement referred to "Southern violators."

[fol. 1518] Negro attorney Solomon Seay, who represents four Alabama Negro ministers who are co-defendants, argued that a whole class of people, and not specifically the commissioners, was referred to in the advertisement, which also cited racial incidents in other Southern states.

Roland Nachman, representing the city commissioners, urged before Jones that the advertisement did not contain innuendo but "perfectly plain" libel.

He called the language in the ad "devastating in the extreme," which he said was precisely what was intended by the framers of the ad."

As to whether Sullivan, whose suit is the first set for trial, was sufficiently singled out in the ad, Nachman argued that the advertisement described activities of Montgomery police whom Sullivan directly supervises as police commissioner.

He also cited Alabama cases to disprove the contention of Times attorneys that the suit improperly cited three separate places at which the alleged libel was committed.

Co-defendants in the case are Negro minister Ralph D. Abernathy and Solomon Seay, Sr., of Montgomery, Fred Shuttlesworth of Birmingham, and J. E. Lowery of Mobile.

Their names appeared as endorsers of the ad, but not as members of the committee which had it published.

King, who has led Negro integration activities in both Montgomery and more recently in Atlanta, was acquitted of perjury by a Montgomery jury subsequent to the appearance of the Times ad.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 51

THE MONTGOMERY ADVERTISER NOV. 1, 1960

TIMES LIBEL SUIT OPENS HERE TODAY

[fol. 1519] The first of a series of court suits calling The New York Times to account for statements regarding racial matters in Alabama begins here Tuesday.

The $500,000 libel suit of L. B. Sullivan is one of three brought by Montgomery city commissioners over an advertisement that appeared in the New York paper.

A similar suit, over the same advertisement, has also been filed in Circuit Court by Gov. John Patterson, who asks a million dollars in damages.

JONES PRESIDES

Circuit Judge Walter B. Jones will preside at the trial opening Tuesday which will be decided by a local jury.

The advertisement which brought on the suits appeared in the Times last March when Negro integration leader Martin Luther King was facing trial in Montgomery for perjury.

It sought funds for King's defense, basing its appeal in part on an account of oppressive measures used against local Negroes demonstrating against forced segregation.

According to the advertisement, student leaders at Alabama State College were expelled after students gathered at the steps of the Capitol here to sing "America."

STATEMENTS FALSE

It was also charged that police ringed the campus with shotguns and tear gas, and that the student lunchroom was padlocked to starve demonstrators into submission.

The three city commissioners and the governor say that these statements were false and that their publication subjected them to public ridicule and contempt, damaging their reputations.

They further maintain they were damaged in their reputations as to the manner in which they discharge their official duties.

A final plea has been entered by attorneys for The Times, in which they sought to show that there was no malice intended in the advertisement. The plea was based on New York law, on the basis of the advertisement being published in New York.

[fol. 1520]

FOUR MINISTERS

Co-defendants with the Times in the case opening Tuesday are four Alabama Negro ministers, the Rev. Ralph Abernathy and the Rev. Solomon Seay, Sr. of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham, and the Rev. J. E. Lowery of Mobile.

They are being defended by Negro attorneys Fred. Gray and Solomon Seay, Jr.

Last Friday, Judge Jones declined to throw out the suit after a pre-trial hearing in which the Times' attorneys argued the suit was improper. He had earlier ruled his court has jurisdiction in the case.

Representing the New York paper are the firm of Beddow, Embry and Beddow, of Birmingham, and two members of Lord, Day, and Lord, the New York firm which is retained by The Times.

Representing the city officials are the local firm of Steiner, Crum and Baker and Calvin Whitesell, a city attorney.

The Times also faces seven other suits, filed in Birmingham over stories by reporter Harrison Salisbury about racial relations in that area.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 52

THE MONTGOMERY ADVERTISER NOV 1, 1960

JURORS SELECTED FOR TIMES SUIT

Police Commissioner L. B. Sullivan's $500,000 suit against The New York Times got off to a slow start this morning, the majority of the time being taken for selection of a jury.

Times attorneys questioned all jurors at length concerning their feelings toward any position the New York newspaper might have taken and any connection the jurors might have with Sullivan's lawyers or the City of Montgomery.

[fol. 1521] Two Negroes were among the original 37 jurors called for service this week, however they were immediately struck from the list by attorneys for Sullivan.

JURORS SEATED

Jurors who will hear the controversial case, which is expected to last all week are John B. Sanford, Boland R. Albright, John O. Boswell, Patrick T. Cahalin, Richard C.

Croy, Guy Davison, Carl Henry, Billy R. Miller, J. Auburn Moorer, Joseph W. McDade, Henry W. Rawls, and John R. Rigsby.

Sullivan's suit is one of three libel actions brought against The Times and four Alabama Negroes based on an advertisement which ran in The Times March 29.

The ad, placed in the newspaper by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, allegedly libeled Sullivan and city commissioners Earl James and Frank Parks in refering to police action taken in regard to Negro student demonstrations here.

2 OTHER CASES ON FILE

James and Parks have also each sued for $500,000.

Named as defendants, along with The New York Times, are Negro ministers Ralph D. Abernathy, Solomon S. Seay, Sr., Fred H. Shuttlesworth and J. E. Lowery, all of whom endorsed the advertisement.

According to one of Sullivan's attorneys, Roland Nachman, The Times retracted the incorrect portions of the ad referring to Montgomery to Gov. John Patterson, but never to Sullivan himself.

No retractions were ever made by the Negro defendants in the case, Nachman said.

Attorneys for The Times denied that the ad in question libeled Sullivan and said no where in the advertisement was there any reference to Sullivan or the police department.

JUDGE JONES PRESIDES

The Times had no reason to believe that material in the ad was false because it received the ad from a reputable advertising agency, said Atty. T. Eric Embry of Birmingham who represents the newspaper in the suit. [fol. 1522]

Sullivan's suit charged The Times with falsely and maliciously publishing the alleged libelous matter and asks for both general damages and punitive damages against the newspaper.

Opening statements as to what they expected to prove were given the jury by attorneys on both sides of the con-

troversy before the court recessed for lunch. Testimony will begin this afternoon.

Circuit Judge Walter B. Jones is presiding over the case.

Attorney Fred Gray, representing the Negro defendants, told the jury that his clients did not sign the ad, were not members of the committee which published the ad, were never approached by that committee as to the use of their names, and in fact did not know that the ad was to be run.

"What happened to them could happen to you or anyone else," Gray said.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 53

THE MONTGOMERY ADVERTISER NOV. 2, 1960

WITNESSES SAY AD REFLECTED ON SULLIVAN

By Arthur Osgoode

The $500,000 libel suit of Montgomery City Commissioner L. B. Sullivan against the New York Times opened in Circuit Court Tuesday, with most of the testimony bearing on whether Sullivan was sufficiently identified in an advertisement to have been libeled.

Defense attorneys made little effort to back up the truth of statements in the advertisement, which charged oppressive treatment of demonstrating Negro students.

The advertisement in question, which also brought suits by the other two city commissioners and Gov. John Patterson, sought funds to defend the Rev. Martin Luther King in his perjury trial here.

[fol. 1523] Attorneys for Sullivan presented a series of witnesses who testified they believed statements in the advertisement reflected on Sullivan and the Montgomery police.

Defense attorneys in cross examination of several of the witnesses got them to say that they personally did not believe the statements and that they thought no less of Sullivan afer having read them.

After lengthy questioning of witnesses by defense attorneys as to connections with the plaintiffs or their attorneys, a jury of 12 white men was selected.

Two Negroes called for jury service were the first to be stricken by attorneys for Sullivan.

In opening arguments, attorney Roland Nachman, representing Sullivan, said the suit was designed not only to compensate Sullivan but "to deter these defendants from ever doing anything like this again."

He said he expected evidence would show the Times failed to make an asked-for retraction to Sullivan, but that a retraction was made when demanded by Gov. John Patterson.

As to Sullivan's not being identified by name, he said it was "not necessary that the ad name Mr. Sullivan." And he pointed to references to alleged police acts which he said clearly reflected on Sullivan in the performance of his duties.

VIGOROUS DENIAL

Eric Embry, representing the Times, vigorously denied the advertisement charged misconduct to Sullivan. Not by "the wildest stretch of inference" could it be construed as referring to the police commissioner, he said.

He said the New York paper never had any first hand knowledge of whether the statements were true or false," and published them after they were received from a reputable advertising agency.

Embry said a retraction was made in the case of Gov. Patterson because of his high position in the state, though the Times did not believe he had been libeled.

The plaintiff's case opened with a reading of the ad- [fol. 1524] vertisement in question by Calvin Whitesell, representing the city commission.

SHARP PROTEST

The reading brought a sharp protest from Negro attorney V. Z. Crawford of Mobile, representing four co-defendants Negro ministers, the Revs. Ralph Abernathy, Solomon Seay, Sr., F. L. Shuttlesworth, and J. E. Lowery.

Crawford objected to what he said was the substitution of the word, "nigger" for Negro, Whitesell said he was only using the pronunciation he had used all his life.

The pertinent sections in the advertisement referred to "truckloads of police armed with shotguns and tear gas" ringing the Alabama State College campus to quell student demonstrations, and to expulsion of student leaders after a gathering on the Capitol steps during which Negroes sang "My Country, 'Tis of Thee."

Still another paragraph says: "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering,' and similar 'offenses.' And now they Have charged him with perjury—a felony under which they could imprison him for 10 years.

EDITOR WITNESS

First witness for Sullivan was Grover C. Hall, Jr., editor of The Advertiser, who said that after reading the statements concerning Montgomery, "I think I'd associate it with the city government—the city commissioners."

Asked whether the statements in the advertisement would affect his opinion of the commissioners, Hall referred specifically to the charge that the lunchroom at Alabama State College had been padlocked to starve students into submission.

Hall said he thought starvation was an "indefensible" form of reprisal.

Hall was cross-examined by Crawford on whether he was [fol. 1525] more widely informed than ordinary readers, so that his was an "expert opinion." He also drew from Hall the statement that at the time the advertisement appeared his relations with Sullivan were not good, though they have since improved.

Succeeding witnesses were real estate and insurance man Arnold Blackwell, Advertiser Assistant Editor William McDonald, clothing store manager Harry Kaminsky, service station operator William M. Parker, Jr., and H. M. Price, Sr., operator of a food service equipment business.

PERSONAL FRIEND

Blackwell, Kaminsky, Parker and Price testified they knew Sullivan personally, and they thought the advertisement would have injured him in their eyes if they had believed statements regarding action of local police.

Price said he would have "believed Sullivan was running a young gestapo" in Montgomery and Parker that Sullivan was using "strongarm" tactics.

Embry questioned each of his personal relations with Sullivan and on whether each thought Sullivan was referred to in specific statements in the advertisement.

Each of the witnesses was questioned on whether padlocking of the college lunchroom or expulsion of the students could be regarded as chargeable to Sullivan under cross examination.

Embry also questioned Kaminsky closely o . whether he believed the police commissioner could be held accountable for all misconduct of police officers.

Kaminsky replied that he thought the police commissioner was accountable for actions of subordinates.

[fol. 1526]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 54

THE MONTGOMERY ADVERTISER Nov. 3, 1960

WRITER OF AD TAKES STAND IN LIBEL TRIAL

By Arthur Osgoode

ONLY CLOSING ARGUMENTS REMAIN IN THE $500,000 libel suit against the New York Times by City Commissioner L. B. Sullivan, with all indications that the case will go to a Circuit Court jury Thursday.

Testimony was completed Wednesday night. Highlights included the appearance on the stand of the plaintiff, Sullivan, and a New York writer who said he helped write the advertisement that led to four local libel suits.

The latter, John Murray, who described himself as a former movie scenario writer and author of industrial and

armed forces film scripts, appeared for the four Negro co-defendants.

All four—the Revs. Ralph Abernathy and Solomon Seay, Sr., of Montgomery, Fred Shuttlesworth of Birmingham, and J. E. Lowery of Mobile—had denied on the stand that they had any knowledge of the ad or had authorized use of their names in it.

SUDDEN 'IDEA'

Murray said the names of the four appeared as a result of a sudden idea on the part of Bayard Rustin, professional organizer and a signer of the advertisement.

Rustin took the names from a list of ministers in the Southern Christian Leadership Conference, Murray related. He said Rustin felt it would not be necessary to seek the consent of the ministers because he felt sure they would approve the advertisement.

Earlier, said Murray, he and two other writers had written the advertisement from material furnished them by Rustin, which they sought to put in "an appealing form."

He told the Court at the time he had no reason to believe the material was not accurate.

'COMPLETELY FALSE'

Sullivan called sections of the advertisement portraying [fol. 1527] suppression of Negro demonstrators at Alabama State Capitol "completely false."

He added that, "I resent it very much."

Referring to a paragraph in which it was alleged that a college lunchroom was closed to starve students into submission Sullivan said that "in my opinion, it never happened in the city of Montgomery."

He also said it was false that Negro integration leader Martin Luther King had been arrested here several times on trumped-up offenses or been assaulted by a Montgomery policeman.

He singled out the statements alleging the arrests of King and the ringing of the college campus by "truckloads of police" as reflecting on his performance as police commissioner.

He said the advertisement was "associated with me when it describes police activities." He said he felt it "reflects on my ability, my integrity, and it has been established here that it is not true."

ILL AT EASE?

Sullivan was pressed by defense attorney Eric Embry as to whether he felt he had been damaged by the advertisement.

"Do you feel ill at ease in walking the streets of Montgomery?" asked Embry?

"No, no one has come up to me personally," answered Sullivan, but added that he did not know what effect the advertisement might have had on others.

But Sullivan conceded that the ad had not damaged his reputation in any obvious way or damaged his social life.

Negro attorney V. Z. Crawford of Mobile asked Sullivan if the suit was a basis for "statewide publicity for running for another office." But the question was ruled improper.

Three Times employes, including the secretary of the newspaper, Harding Bancroft, testified. Bancroft said that no retraction was made to Sullivan because it was believed that he had not been libeled in the ad.

But, he contniued, a retraction was made in the case of [fol. 1528] Gov. John Patterson, because the paper did not intend "any reflection on the State of Alabama," of which the governor was "the embodiment."

EMPLOYES ON STAND

Defense attorneys placed two Times employes on the stand in an effort to show that the advertisement was accepted in good faith in the normal course of business.

D. V. Redding, manager of the Times Advertising Acceptability Department, said it was the department's job to screen the advertising in an effort to keep out objectionable matter.

He approved the ad, he said, because it was signed by "a number of people who were well known and whose motives I had no reason to question."

He cited Dr. Harry Emeson Fosdick, Mrs. Franklin D. Roosevelt, Mr. Harry Belafonte, Sidney Poitier, Norman Thomas, Marlon Brando and Mrs. Ralph Bunche.

But Redding conceded that it was "a fair statement" that he made no attempt to check the accuracy of the statements made.

Gershon T. Aronson of The Times advertising department said he took the order, for the ad, which was from Union Advertising Service, "a regularly recognized agency."

He also said he saw no reason to question the accuracy of the ad which he merely "scanned hurriedly."

Other witnesses, who appeared for the plaintiffs Wednesday were City Dt. Lt. E. Y. Lacy and Advertiser Managing Editor L. P. Patterson. Lacy said city police worked overtime to find who bombed the home of Martin Luther King.

SAW ADVERTISEMENT

Patterson said he saw the advertisement in The Times and noted some "facts that were strange to me—that I'd never heard of before." He said he put the ad on the desk of Grover C. Hall, Jr., editor of The Advertiser.

The suit is over an advertisement that sought funds to defend Martin Luther King at his perjury trial here. Dr. King was subsequently acquitted of lying about his income [fol. 1529] on a state income tax return.

Incidents referred to in the ad concern events that followed an attempt by Alabama State College students to seek service in a courthouse snack bar, including demonstrations at the Capitol and on the college campus.

Suits were also brought over the ad by City Commissioners Earl James and Frank Parks, also for $500,000 each, and by Gov. John Patterson, for one million dollars.

The Sullivan suit will be resumed before Judge Walter B. Jones at 9:30 a. m. Thursday.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 55

THE MONTGOMERY ADVERTISER NOV. 2, 1960

SULLIVAN CASE AGAINST TIMES IS CONTINUING

MORE WITNESSES SUMMONED TODAY IN LIBEL SUIT

Attorneys for Commissioner L. B. Sullivan began calling witnesses Tuesday to lay the foundations for the commissioner's $500,000 libel suit against The New York Times.

Five witnesses testified they felt an ad soliciting funds for the defense of the Rev. Martin Luther King, Jr., clearly reflected on Sullivan and his conduct of office even though he was not specifically mentioned in the ad.

Attorneys representing The Times, however, managed to get most of these witnesses to concede that they never believed the statements which they felt referred to Sullivan and that they think no less of the police commissioner's integrity today as a result of the publication.

The first witnesses were Grover Hall, Jr., editor of The Montgomery Advertiser; Arnold Blackwell, a real estate and insurance broker; Harry Kaminsky, sales manager of a downtown clothing store, William M. Parker, a service station operator, and H. M. Price, Sr., who runs a food [fol. 1530] service equipment business.

SAY AD REFLECTED ON CITY

All made substantially the same testimony, that they felt the ad reflected on the city government and Sullivan in particular as police commissioner. Had they believed the statements to be true, Sullivan would have fallen in their estimation, they testified.

While Sullivan claims the whole ad was libelous, his attack centers on three or four key paragraphs. One concerns a charge that police "ringed the campus" of Alabama State College with tear gas bombs and guns in an effort to quell student discontent.

Another paragraph, Sullivan maintains, suggests that King the Negro integration leader, was beaten either by or with the consent of Montgomery police.

But the section of the ad which Sullivan feels is most libelous refers to the padlocking of the dining hall at Alabama State College in an effort to "starve them into submission."

The full page ad appeared in the Tuesday, March 29, edition of The Times. It solicited funds to defend King against a perjury charge brought against him in connection with the filing of his state income tax, King was later acquitted of the charge.

Sullivan's attorneys attempted to introduce evidence of racial tension that existed in Montgomery at the time the ad appeared. Advertiser Assistant Editor William H. McDonald was called to the stand to identify pictures of Negro demonstrations during March, but Judge Walter B. Jones ruled such evidence irrelevant and inadmissable.

There was one brief skirmish before testimony began. When Atty. Calvin Whitesell, a city attorney representing Sullivan along with several others, began reading the controversial advertisement, Negro Atty. V. Z. Crawford of Mobile objected that Whitesell was pronouncing the word "nigger" instead of "Negro" as it appeared in the ad.

Judge Jones asked Whitesell if he was indulging in "interpolations" in his pronounciation. Whitesell replied he was pronouncing the word as he had done "all my life." [fol. 1531] To newsmen, he did not seem to be saying "nigger," but something closer to "nigra" or "nigro."

Three Negro attorneys are among a dozen or so attorneys participating in the trial. They are representing four Alabama Negro ministers whose names appeared on the ad. They deny they signed the advertisement, however.

SAY AD NOT LIBELOUS

The Times, represented by the Birmingham law firm of Beddow, Embry, and Beddow, does not contend the ad was entirely true. They do maintain, however, that it did not refer to any identifiable person nor is it libelous.

Further, they contend that it came from a reputable advertising agency and was signed by many persons of high character.

They cited several types of advertising which The Times will not accept. This was done to prove that the newspaper exercises diligent caution in screening out libelous, distasteful, and erroneous advertising.

Montgomery's other two commissioners, Mayor Earl James and Frank Parks, have also filed $500,000 suits against The Times.

GOVERNOR ASKS $1 MILLION

Gov. Patterson has also filed a $1 million suit as a result of the ad. The Times later made a retraction and apologized to the governor, but the retraction did not refer to the Montgomery city officials.

Several police and city officials in Birmingham have also filed suits against The Times but their action results from two newsstories written by Harrison Salisbury rather than the ad.

Salisbury, who was later indicted for criminal libel by the Jefferson County Grand Jury, wrote about the deterioration of race relations in Birmingham.

[fol. 1532]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 56

THE MONTGOMERY ADVERTISER NOV. 4, 1960

$500,000 DAMAGES AWARDED SULLIVAN BY TIMES SUIT

JURY RULING GIVES POLICE HEAD FULL AMOUNT

By Arthur Osgoode

A verdict of half a million dollars—apparently the largest ever awarded here—was awarded Montgomery City Commissioner L. B. Sullivan Thursday.

The defendants were the New York Times and four Alabama Negro ministers. Each had been charged with responsibility for statements damaging to Sullivan's reputation contained in an ad appearing in the New York paper.

Several lawyers in the court room as the verdict was announced said the damages were the biggest ever awarded in a state court.

A Circuit Court jury deliberated two hours before announcing at 5:50 p. m. that they had reached a decision.

RECEIVED QUIETLY

The verdict was received quietly in the courtroom, where lawyers, court officials, newsmen, and a handful of spectators were waiting.

In his closing argument, Montgomery attorney Roland Nachman representing Sullivan, urged the jury:

"we want you to show how you resent this slur on the reputation of this man you have elected police commissioner."

Answering defense arguments that no malice was intended in the Times advertisement which alleged that local Negro demonstrators were oppressed, Nachman said the advertisement's "reckless, violent language is evidence of malice."

Towards the close of his argument, Nachman turned toward the table where lawyers for the Times were seated, pointed his finger and exclaimed:

WHOLE TRUTH

"When you write about a citizen of this town, you tell [fol. 1533] the truth, Mr. New York Times,—the whole truth—and you won't have to face suit in this county!"

Nachman also argued that the Times attorneys had failed to even attempt to show that the statements in the ad were true, "the one thing in the world that would have been a complete defense."

Eric Embry, summing up the case for the Times, contended that newspaper employes who took the ad in question acted in good faith and without malice.

He said "a superhuman system" would be needed to verify the truth of every statement in advertisements sent to the newspaper.

And he asked, "Where is the evidence that has shown you that Mr. Sullivan has suffered any injury?"

'FAVORABLE PUBLICITY'

Far from being injured by the ad, suggested Embry, Sullivan has received "favorable publicity as a result of this litigation."

He also attacked the closing argument of Sullivan's attorney, Robert Steiner, III, charging that it sought to inflame the jurors against residents of other sections of the country.

He said Steiner was "appealing to every base motive in man."

Steiner had previously told the jurors that: "Newspapers are very fine things, but newspapers have got to tell the truth."

"One way to get their attention and the attention of everybody else who publishes newspapers is to hit them in the pocketbook."

Steiner argued that the wording of the advertisement made it evident that it was directed at Montgomery's city officials.

'FAILED MISERABLY'

Attorney Fred Gray closed his case by insisting that the plaintiff had "failed miserably" in linking four Negro co-defendants to their libel charges.

Gray pointed out that the four Negro ministers—Solomon Seay, Sr., Ralph Abernathy, J. E. Lowery, and Fred Shuttlesworth—had all denied authorizing the use of their signatures or of even having knowledge that the ad was to be published.

[fol. 1534] Calling them the "forgotten defendants in this case," he urged that the state had produced almost no testimony to implicate them in the publishing of the ad.

And he got one of the few laughs of the proceedings when he asked facetiously:

"How could these individual defendants retract something, if you'll pardon the expression, that they didn't 'tract.'"

In charging the jury, Judge Walter B. Jones advised that "The parties stand before you on equal footing, and are equal at the bar of justice.

"Whether they belong to this race or that has nothing to do with this case."

'WITHOUT REGARD . . .'

Following the verdict, the four Negro defendants issued a statement.

"Naturally we regret the fact that the verdict of this jury was against us. Nevertheless, we reiterate the absolute truth in this matter: We had no responsibility in the publication, composition, or providing of materials in the ad in question. Neither did we give our consent to affix our names. That is, it seems to us, one of the many trials and tribulations inflicted upon us as we continue to struggle for freedom and human dignity for all Americans without regard to race or color."

The advertisement which led to the law suit appeared in the Times last March, seeking funds with which to defend the Rev. Martin Luther King against perjury charges.

King was subsequently acquitted of giving false statements in an income tax return. The trial was held in the same courtroom in which the libel action was tried.

The advertisement charged "Southern violators" with harassing King, bombing his home, and arresting him on trumped-up offenses.

It further charged that Negro students at Alabama State College had been expelled after singing "My Country, 'Tis [fol. 1535] of Thee" on the Capitol steps here, and that local police ringed the campus, armed with shotguns and tear gas.

In New York, the New York Times was reported as having no comment on the jury award.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 57

THE MONTGOMERY ADVERTISER DEC. 2, 1959

'GROSSLY UNJUST' SAYS TIMES: ASKS NEW TRIAL

By Arthur Osgoode

The New York Times, attacking a $500,000 libel verdict against it as "grossly unjust," Thursday filed a motion for a new trial.

City Commissioner L. B. Sullivan was awarded the half-million dollar judgment by a Circuit Court jury on Nov. 3.

Sullivan had asked this amount in compensatory and punitive damages for what he claimed were defamatory statements in a Times advertisement.

In moving for the new trial, which is often preliminary to an appeal, attorneys for the New York paper blamed the amount of the verdict on the pressure of community sentiment.

The $500,000 award, they claimed, was "so excessive as to clearly show it was the result of bias, passion, and prejudice or other improper motive on the part of the jury."

They further maintained that the verdict was "contrary to law" and "contrary to the great preponderance of the evidence."

Exhibits accompanying the motion included news stories of the trial from the Alabama Journal and The Advertiser and an Advertiser editorial titled "Will They Purge Themselves?"

THE EFFECT

The editorial was offered as showing the effect of publicity in arousing community sentiment against The Times. It described the advertisement as a "slanderous lie."

[fol. 1536] The advertisement which brought on the suit by Sullivan described oppressive measures allegedly taken

against Negro students at Alabama State College. It sought funds for the defense of the Rev. Martin Luther King, Negro integration leader who was subsequently acquitted of perjury charges.

Sullivan's suit was tried first, but the city's other two commissioners, Earl James and Frank Parks, also have suits pending against the Times for $500,000.

Gov. John Patterson has a similar suit for a million dollars.

LEGAL REASONS

Still other suits face The Times in the Birmingham area over articles by reporter Harrison Salisbury which described racial tension and alleged violence there.

Besides the allegations of bias and emotion, numerous legal reasons were cited by The Times attorneys in their move to have the case retried.

They said the local court erred:

—In ordering The Times to produce documents:

—In denying a motion to quash service by finding that the New York paper was "doing business" in Alabama:

—In charging the jury that the statements made in the advertisement were "libelous per se," or libelous on their face as a matter of law.

Also objected to as improper was testimony by several witnesses, including Advertiser Editor Grover C. Hall, Jr. When Hall said he felt statements in the advertisement referred to the city commissioners, they maintained, Sullivan's attorneys sought to "substitute the witness's opinion for that of the jury."

WHILE A PASTOR

The ad in question charged police harassment of King while he was a pastor of a Negro church here. It also charged, among other things, that the Alabama State College campus was ringed by policemen with guns and tear gas after student demonstrations.

[fol. 1537] Singled out in the motion as objectionable in press coverage of the trial was the use of a picture showing the jurors summoned for service in the trial.

Times attorneys maintained that this made the jurors especially susceptible to the pressure of community sentiment.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 58

THE MONTGOMERY ADVERTISER Dec. 16, 1960

LAWYERS IN TIMES CASE AGREE TO DELAY HEARING

Lawyers representing The New York Times and Montgomery city commissioners agreed Friday to put off arguments on a motion by the Times for a new trial of the libel suit by Commissioner L. B. Sullivan.

Sullivan won a $500,000 libel award from a Montgomery Circuit Court jury for statements made in an advertisement that appeared in The New York paper.

The new date for the hearing in Jan. 14.

Also set was the libel suit of Mayor Earl James against the Times, which is to begin on Jan. 30.

Sullivan, James and Commissioner Parks each sued The Times for $500,000. The suits of both James and Parks are still to be tried.

Basis for the suits was an advertisement that called for money for the defense of the Rev. Martin Luther King in his trial here for perjury, of which he was subsequently acquitted.

The advertisement contained statements alleging oppressive police measures against Negro demonstrators in Montgomery.

Representing the three commissioners are attorney Calvin Whitesell and the law firm of Steiner, Crum and Baker. Representing the Times is the Birmingham firm of Beddow, Embry and Beddow.

[fol. 1538]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 59

THE MONTGOMERY ADVERTISER

DEC. 28, 1960

CIRCUIT COURT '61 SESSIONS START JAN. 9

Circuit Court sessions for 1961 get under way in Montgomery on Jan. 9 when Judge Walter B. Jones will begin hearing approximately 200 non-jury civil cases.

These cases are expected to take up about a week, after which three weeks of jury trials of civil cases will begin. The civil session is expected to end on Feb. 2.

The $500,000 damage suit by Mayor Earl James against the New York Times is the most prominent case on the civil docket. It is to begin on Jan. 30.

James is suing the New York Times newspaper for libel, charging he was defamed in an advertisement that sought money with which to defend the Rev. Martin Luther King in his perjury trial here.

Other civil terms are to begin on April 10 and Oct. 2.

A grand jury will go in session Feb. 13, opening a criminal term of Circuit Court. Trials are set for the weeks beginning Feb. 20 and Feb. 27.

Grand juries are also to convene on May 8, July 10, and Nov. 6, followed by criminal trials presided over by Judge Eugene Carter.

Judge Jones will call equity dockets on March 6, May 1 and Nov. 6.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 60

THE ALABAMA JOURNAL

DEC. 27, 1960

MAYOR'S SUIT AGAINST TIMES SET FOR TRIAL

Sessions of the Circuit Court for 1961 begin Jan. 9 with [fol. 1539] some 200 non-jury civil actions scheduled to be heard before presiding Judge Walter B. Jones.

The next three weeks will be devoted to civil jury trials which are expected to be completed on Feb. 2.

Set for Jan. 30 is the $500,000 libel suit brought by Mayor Earl James against The New York Times Co. and four Negro ministers.

Other calls of the civil division of the court have been placed on the calendar for the weeks beginning April 10 and Oct. 2.

The first grand jury of 1961 will convene Feb. 13 to consider cases to be brought in the criminal division of the Circuit Court Criminal trials will begin Feb. 20 before Judge Eugene Carter.

Three other grand juries will be empaneled during the year, May 8, July 10, and Nov. 6, followed by sessions of the criminal division on May 15, July 17, and Nov. 13.

Judge Jones will call the equity docket on Mar. 6, May 1, and Nov. 6.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 61

THE MONTGOMERY ADVERTISER

JAN. 14, 1961

SULLIVAN SUIT RETRIAL BID SET MARCH 3

Attorneys will argue a motion for a new trial of the libel suit of City Commissioner L. B. Sullivan against The New York Times on March 3 instead of on Saturday.

Sullivan was awarded the full $500,000 he had asked for alleged libel in an advertisement. The motion is preliminary to appeal to higher courts.

Times attorneys, in filing their motion, argued that the award was so excessive as to indicate bias on the part of the jurors.

The police commissioner was awarded the $500,000 last Nov. 3. He had charged that statements in The Times [fol. 1540] advertisement reflected on him personally and on his conduct in office.

The advertisement, which ap- measures taken against Negro student demonstrators here.

Attorneys for The Times maintained that the advertisement could not be construed as reflecting on Sullivan.

The advertisement, which appeared in the Times last March 29, sought funds with which to defend Negro integration leader Martin Luther King, who was subsequently acquitted of perjury charges here.

The other two commissioners, are also asking $500,000 for statements in the same advertisement which they say libel them. Mayor Earl James' case is set for Jan. 30. Commissioner Frank Parks' suit is still pending. Gov. John Patterson has a million-dollar suit against the Times stemming from the same ad.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 62

THE MONTGOMERY ADVERTISER

JAN 18, 1961

TIMES ATTORNEY HALTED IN QUIZZING OF MAYOR

An attorney for The New York Times was halted Tuesday when he sought to question Montgomery Mayor Earl James on his motives for bringing a $500,000 libel suit against the newspaper.

James was being examined by attorneys for The Times in Circuit Court in order to turn up evidence prior to his trial, which is set for Jan. 30.

As James' testimony was being taken, Roderick McLeod, Birmingham attorney representing the Times, sought to question the mayor as to his motive in bringing the lawsuit, what he hoped to gain by it, and whether he had conferred with other commissioners on his libel suit.

(Commissioner L. B. Sullivan won a $500,000 verdict in a similar suit against the Times last term of court, and Commissioner Frank Parks has a similar suit pending.) [fol. 1541] McLeod's questions brought objections from attorneys Roland Nachman and Robert E. Steiner, III, representing James. They directed the mayor not to answer.

Circuit Judge Walter B. Jones then was called in to hear the dispute.

After listening to arguments on both sides, Jones ruled that the mayor could not be required to state his motives in bringing the suit.

NOT RELEVANT

Jones also ruled that whether James had conferred with the other two commissioners was not relevant to the case.

It was also revealed Tuesday that four Negro ministers who are co-defendants with the New York newspaper may have missed the boat on their motions for a new trial.

Attorneys Fred Gray and Solomon Seay, Jr., representing the Revs. Ralph Abernathy, S. S. Seay, St., J. E. Lowery and Fred Shuttlesworth, asked Jones to continue their motions for a new trial to March 3, the same date set for the same motion by the Times.

OBJECTION RAISED

But Nachman and Steiner objected, contending that under Alabama law the motion of the individual defendants for a new trial had expired on Saturday with no previous request made for a continuance.

The state law says that a motion for a new trial is dead unless it is continued within 30 days from the time it is filed. Circuit Court records show that the motion of the four defendants was continued to Jan. 14.

Gary and Seay said they were under a misapprehension in the matter, thinking that their motions would be continued along with that of The Times.

Jones said he would rule on the matter Wednesday.

[fol. 1542]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 63

THE MONTGOMERY ADVERTISER

JAN. 19, 1961

JUDGE RULES TIME EXPIRED FOR RETRIAL

Chances for a new trial for four Negro ministers who face along with The New York Times, a $500,000 libel judgment, ran out last Saturday, Circuit Judge Walter B. Jones ruled Wednesday.

Jones said the defendants lost out when they failed to ask a continuance on their motion for a new trial.

Attorneys Fred Gray and Solomon Seay, Jr. argued that when lawyers for The Times were granted an extension to March 3 for arguments on a new trial that they were entitled to the same extension.

But Jones ruled that they should have sought a continuance separately.

The motion for a new trial is a preliminary to appeal. The four co-defendants are thus faced with a possible execution of the judgment.

The $500,000 was awarded City Commission L. B. Sullivan, who claimed that his reputation had been damaged in a Times advertisement that charged Montgomery police had violated the rights of Negro demonstrators.

Mayor Earl James has a similar $500,000 libel suit growing out of the same advertisement set for trial this month.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 64

THE MONTGOMERY ADVERTISER

JAN 30, 1961

MAYOR'S SUIT AGAINST TIMES OPENS TODAY

Trial starts Monday on Mayor Earl James' suit seeking $500,000 from the New York Times and four Negro ministers.

[fol. 1543] The newspaper and the four Negroes will begin their defense on the Montgomery mayor's complaint already facing a $500,000 libel suit judgment awarded Police Commissioner L. B. Sullivan last November.

Defense attorneys are contesting the jury's awarding Sullivan the full amount he sought, and they will argue their motion for a new trial in that case March 3. They have said they will appeal to higher court if they are denied a retrial.

MARCH 29 AD

Sullivan, James and City Parks Commissioner Frank Parks each filed a $500,000 lawsuit claiming they were libeled by a full-page advertisement in The Times last March 29.

Parks' complaint against the newspaper and the four Negro leaders will be tried after James' suit is decided, probably this Spring.

All three city officials claim they were ridiculed and shamed by the Times ad, which was critical of police action against demonstrating Negro college students amid racial tension here last March.

It solicited money for the legal defense of the Rev. Martin Luther King, Jr. before the Negro integration leader was acquitted on charges of falsifying his state income tax returns.

Negro defendants in the suits are the Rev. Ralph D. Abernathy and the Rev. Solomon S. Seay, Sr. of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 65

THE MONTGOMERY ADVERTISER JAN. 31, 1961

WITNESSES FEEL JAMES TARGET OF AD IN TIMES

By Art Osgoode

BEARDS, SKIRTS AN ISSUE

Four witnesses for Mayor Earl James said they felt a New York Times advertisement alleging repressive police [fol. 1544] action against Montgomery Negroes was aimed at him, as his $500,000 libel suit against the New York paper got under way in Circuit Court here Monday.

Actual trial of the case got under way in mid-afternoon after a series of legal maneuvers consumed the entire morning.

Among these was a motion by defense attorneys to put off the trial until after the Civil War Centennial observance here next month.

They argued that beards worn by Montgomery men and antebellum costumes worn by women awakened memories of the Civil War. Since the libel suit involves the segregation controversy, they maintained, any stirring of sectional feeling injured the chances of their client for a fair verdict.

Judge Walter B. Jones denied their motion.

Leadoff witness for the plaintiff was Mrs. Evelyn Watkins, operator of a diaper service here. She said that she thought descriptions of police action against Negro students referred to James.

And she said that, if she did not know the mayor personally, they would have caused her to believe him unfit to fill his job.

Cross-examined by defense attorney Eric Embry of Birmingham Mrs. Watkins acknowledged that she had first read the entire ad in the office of attorney Roland Nachman,

who represents James, but said she had seen "excerpts" from it earlier.

INJURED MAYOR

She was followed by George A. Dozier, farmer and member of the local school board; Lawrence Knight, principal of Lloyd Junior High School; and Leaborne Eads, official of Henley Memorial Co.

Each said they felt the ad injured James' reputation and would likely cause them not to hire a person they believed guilty of the conduct imputed in the ad.

But under cross-examination, each witness said that they did not believe the statements in the ad which they said they thought referred to the mayor.

Knight, who said he had known James for 30 years, conceded that the mayor still had an excellent reputation. [fol. 1545] But he insisted that the wording of the ad reflected on city officials responsible for the actions of police.

CROSS EXAMINED

Embry cross-examined each witness closely on whether they would have construed the ad as referring to James if they had relied only on the wording of the ad itself. But each witness insisted that their original interpretation of the ad was that it was a reflection on local city officials.

The trial was recessed shortly before 6:30 p.m. It is to be resumed at 9:30 a. m. Tuesday.

In opening arguments, Nachman said he expected to show that references to police action in the Times ad, which appeared March 29, 1960, led readers to assume that the local city officials were responsible for acts of oppression.

He claimed that the ad had done "grievous harm to the plaintiff," holding him up to "public contempt, hatred and ridicule." Embry replied that he expected to show that the ad could not be shown to refer to James as an individual, but that it referred instead to "the community as a whole."

IN GOOD FAITH

He observed that the contents of the ad might be repugnant to the jurors—"not calculated to make you laugh

and smile"—but that the test was whether it actually libeled James as a person.

Embry also said testimony would show that The Times accepted the advertisement in "good faith," with no reason to doubt its veracity.

One of the attorneys for four Negro ministers who are co-defendants with The Times said in his opening statement that none of the four consented to the use of his name on the ad and were "in no way responsible."

Charles S. Conley further maintained that there is no law to compel people to retract statements for which they were not responsible.

The four defendants are the Revs. S. S. Seay, Sr. and [fol. 1546] Ralph Abernathy of Montgomery, Fred Shuttlesworth of Birmingham and J. E. Lowery of Mobile.

Before the trial got under way, Jones rejected motions that he recuse himself (remove himself as judge), and that the list of jurors for the trial be thrown out.

CHALLENGED TWICE

Attorneys for the Negro defendants challenged the jury list twice, calling attention to the small number of Negroes on the jury rolls.

Their first motion charged that local jurors do not "represent a cross section of the citizens of this county." It said that 37 per cent of adult males in the county were Negro but "only a token few" serve on juries.

After Judge Jones ruled that the first motion was made too late in the proceedings, the Negro attorneys moved to void the jury venire, arguing that in this case they could not have acted sooner. But Jones denied this motion also.

The defense motion by Embry asking a continuance on the grounds that "we're going up against a stacked deck" because of the Centennial observance called newsmen's attention to the number of beards in the courthouse.

CLEAN CHINS

James wore one. So did five of the jurors and numerous spectators. But the attorneys for the Times and for James were clean shaven.

Jurors were questioned lengthily on their connection with the city. Negro attorneys also asked if they were members of the Ku Klux Klan or Citizens Council, or of the Civitan, Rotary or Kiwanis Clubs and whether they held views on integration that would make it impossible to render a fair verdict.

One juror said he could not be dispassionate in view of the controversial issues involved, and was disqualified. There was one Negro juror among those from whom the 12 jurors were selected. Attorneys for James eliminated him on their second strike.

[fol. 1547]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 66

THE MONTGOMERY ADVERTISER

FEB. 5, 1961

NEGROES FACING SEIZURE OF PROPERTY SEEK RELIEF

By Dan Coggins

Last-minute relief will be sought by four Negro ministers facing loss of everything they own to help pay off a $500,000 libel judgment against them and the New York Times.

One of their attorneys said he will ask state court to excuse the four Negroes from posting a $1 million joint bond to stay execution of the huge settlement while they appeal to higher court.

Negro attorney Charles S. Conley of Montgomery planned the action after sheriff's deputies Friday seized a car belonging to one of the Negro co-defendants, the Rev. Ralph D. Abernathy of Montgomery.

Seizure of Abernathy's 5-year old sedan thus began moves to collect the $500,000 judgment against the four Negro leaders in a libel suit files by Montgomery Police Commissioner L. B. Sullivan.

A Circuit Court jury awarded Sullivan the full amount he sought last November. A similar suit brought Mayor Earl James a $500,000 judgment Wednesday night. The third companion complaint, by City Commissioner Frank Parks, is awaiting trial.

The three city officials sued the four-Negroes and the newspaper because of an advertisement dealing with Montgomery's racial troubles a year ago, which appeared in The Times last March 29.

Efforts to collect the $500,000 judgment all stem from the Sullivan case, because the New York Times has a pending motion for retrial, no writ has been issued to collect the sum from the newspaper.

Conley said that unless the court agrees to forego the $1 million bond the Negro ministers face "harrassment at most inconvenient times" during the period pending the appeal, which could reach the U.S. Supreme Court.

ISSUED WRITS

Circuit Clerk John R. Matthews said he issued writs to execute the judgment against all four Negro co-defendants [fol. 1548] —Abernathy, the Rev. Solomon S. Seay, Sr. of Montgomery, the Rev. Fred Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile.

As of Saturday afternoon, only Abernathy's auto had been impounded. Seay was reported away from the city, but his wife said no one from the sheriff's office had been there yet.

In Mobile, where the attachment against Lowery's property will be handled, the sheriff's office confirmed receipt of the writ of execution from Montgomery.

George Bellman, chief clerk of the Mobile sheriff's office said a deputy had been sent to talk with Lowery and see what property could be attached and that a report from the officer is expected Monday. Lowery, meanwhile, said he had not been contacted.

At Birmingham, Shuttlesworth said he had been notified by the sheriff's office that he has until Wednesday to settle the claim or become "subject to levy on your property without further notice," Shuttlesworth said he has little property besides an auto.

Orders have gone out to impound the Negroes' property —and not the Times'—because of a ruling last month by Circuit Judge Walter B. Jones, who tried the Sullivan complaint.

That decree came after a series of events beginning soon after the Sullivan trial when attorneys for the Times and the Negroes both filed motions for a new trial on the police commissioner's suit.

Seeking a retrial is the usual preliminary step to an appeal in such cases. If another trial is refused, the defendant's normally appeal direct to the Alabama Supreme Court.

Arguments on the retrial motions by the Negroes and newspaper were scheduled for last month, but Times attorneys then asked for and received a continuance of the hearing until March 3.

Jones ruled that because the Negro lawyers failed to file their own individual request for a postponement of the retrial hearing, they forfeited the right to do so.

The Negro attorneys argued that the newspaper's plea for a continuance of the hearing should suffice for them, too. But Jones overruled that argument, decreeing they should have made their own request.

[fol. 1549] That ruling left the Negroes only the recourse of a direct appeal to the State Supreme Court requiring bond, and collection of the judgment thus could begin until the required bond was posted.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 67

THE MONTGOMERY ADVERTISER FEB. 7, 1961

ATTACHMENT OF MONEY BEING SOUGHT

Lawyers for Police Commissioner L. B. Sullivan are seeking to attach funds for Negro ministers who, along with the New York Times had a $500,000 libel judgment assessed against them.

Sullivan was awarded the judgment by a Circuit Court

jury last November. Last week another jury awarded a similar $500,000 judgment to Mayor Earl James.

The four ministers are the Rev. S. S. Seay, Sr. and Ralph Abernathy of Montgomery, Fred Shuttlesworth of Birmingham and J. E. Lowery of Mobile.

Garnishment orders have been issued against any funds that might be held by any of the four in the Montgomery Improvement Association and the Tuskegee Federal Savings and Loan Association.

CONSIDERED SPEARHEAD

The Montgomery Improvement Assn. is considered the spearhead of local Negro integration activities. Abernathy is its president.

Neither Shuttlesworth nor Lowery have any known connection with it.

Abernathy's car, a 5-year old sedan was seized by deputies here Friday. Lowery's car also has been reported attached in Mobile.

Execution of the judgment was ordered after Judge Walter B. Jones ruled the four ministers had lost their chance for a new trial through failure to continue their motion for it.

[fol. 1550] The defendant's were sued about an ad in the New York paper picturing oppression of Negro students at Alabama State College. The city officials maintained the ad defamed them.

A suit by City Commissioner Frank Parks, also for $500,000 is still pending. So is a million-dollar suit over the same ad by Gov. John Patterson.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 68

THE MONTGOMERY ADVERTISER FEB. 8, 1961

NEGROES' ATTORNEYS SEEK CUT IN MILLION-DOLLAR BOND

By Arthur Osgoode

Attorneys for four Negro ministers whose property has been attached to partially satisfy a $500,000 libel verdict

against them sought Monday to get their million-dollar appeal bond reduced.

By posting bond, the four could avoid attachment of property pending outcome of the case.

So far, the sheriff's deputies have attached automobiles belonging to Ralph Abernathy of Montgomery, Fred Shuttlesworth of Birmingham, and J. E. Lowery of Mobile.

Also attached Tuesday was a small lot in Madison Park, northeast of Montgomery, belonging to the Rev. S. S. Seay, Sr., also a defendant in the libel action.

ASKED TO RECONSIDER

Attorneys Charles S. Conley and Solomon Seay, Jr. Tuesday asked Judge Jones to reconsider continuing their motion for a new trial, as well as to reduce the amount of the bond.

Jones told them they were "dead" so far as a new trial was concerned. He said he had no authority to grant such a continuance.

He also offered the informal opinion that he would also be unable to reduce the amount of the supersedeas bond they must post before appealing the case.

[fol. 1551] The four ministers along with The New York Times, are all jointly liable for the amount of the $500,000 judgment. The law says the bond should be twice the amount of the judgment.

NOT SUBJECT

The New York Times is not subject to attachment of property at this time since it continued its motion for a new trial. Judge Jones ruled that, because attorneys for the four Negro co-defendants failed to renew their motion for a new trial, they allowed it to expire.

The $500,000 judgment was awarded City Commissioner L. B. Sullivan last fall. A similar $500,000 judgment was awarded Mayor James last week. Motions for a new trial are expected in James' case in the near future.

Beside the attachments of property, garnishment proceedings were filed against any funds any of the four de-

fendants might have in the Montgomery Improvement Association and the Tuskegee Federal Savings and Loan Association.

The Montgomery Improvement Association is a local Negro organization opposed to segregation.

Conley protested to Jones Tuesday that it would be "impossible" for his clients to raise the required million-dollar bond.

Jones told him to offer a motion, which could be set for a hearing and argued between attorneys for the four ministers and attorneys for Sullivan.

Conley urged that if the New York Times posted a million dollar bond, Sullivan's judgment would be fully secured.

The libel suit grew out of a New York Times advertisement critical of local treatment of Negroes.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 69

THE MONTGOMERY ADVERTISER FEB. 4, 1961

By The Associated Press

[fol. 1552] Sheriff's deputies seized a 5-year-old sedan belonging to a Montgomery Negro leader Friday as partial payment of the $500,000 libel judgment against him in The New York Times case.

The impounded car is owned by the Rev. Ralph D. Abernathy, who was a co-defendant with three other Negro ministers and the New York Times in a libel suit filed by Police Commissioner L. B. Sullivan.

A state court jury awarded Sullivan the $500,000 judgment last November. Mayor Earl James, who filed a similar suit, was awarded the same amount at a trial which ended Wednesday night. A third suit, brought by City Commissioner Frank Parks, is awaiting trial.

WAITED TOO LONG

Deputy Sheriff F. H. Phelps confirmed he impounded Abernathy's auto Friday afternoon on directions from Circuit Clerk John R. Matthews.

Phelps said Abernathy's property was seized in accordance with a ruling by Circuit Judge Walter B. Jones that attorneys for the four Negro ministers waited too long to ask for a retrial in the Sullivan case.

Jones decreed last month that the time limit had expired before the Negro lawyers requested another trial. Times attorneys filed their motion in time, however, and arguments on it are scheduled March 3.

The deputy said he also had an attachment against the property of the Rev. Solomon S. Seay, Sr., of Montgomery, another defendant in the three suits, but said none of Seay's belongings had been impounded yet.

Under said law Phelps said any attachments against the Rev. Fred L. Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile would be handled by the sheriff's offices in those cities. Shuttlesworth and Lowery are the other two Negro defendants in the libel complaints and writs have been issued against them.

'WILL WALK NOW'

Abernathy, president of the pro-integration Montgomery Improvement Association, said the seizure of this car "will not in any way deter me or stop me from fighting for the [fol. 1553] rights of my people. I shall walk now on the road to freedom . . ."

The three Montgomery officials each filed a $500,000 libel suit against the four Negro and the New York Times because of a full-page advertisement which appeared in The Times last March 29.

Sullivan, James and Parks claim the ad, which was critical of police handling of Negro college student demonstrations here last spring, held them up to ridicule and shame.

The ad sought funds for the legal defense of the Rev. Martin Luther King, Jr. before the Negro integration leader was acquitted on charges of lying about his state income tax.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 70

NEW TRIAL MOTION SET IN LIBEL SUIT

FEB. 3, 1961

With a second $500,000 award against the New York Times, made to Montgomery Mayor Earl James by a Circuit Court Jury Wednesday, attention is in the series of libel cases now turned to March 3.

On that date, attorneys for the Times will argue for a new trial of the libel suit in which City Commissioner L. B. Sullivan also received $500,000.

If turned down by Judge Walter B. Jones, Times attorneys will doubtless appeal to the Alabama Supreme Court. They are also certain to appeal the award to James also if their bid for a new trial is rejected.

The state tribunal could affirm the award, overturn it, or scale down the amount.

It is generally agreed among court observers, and emphatically stated by Times attorneys, that The New York paper will settle for nothing less than a complete reversal of the libel verdicts.

TO HIGH COURT

That means they are prepared to go up to the U.S. Supreme Court. However, they can only do so on the basis of issues involving the U. S. Constitution.

[fol. 1554] One such issue could be the question of whether the state court had jurisdiction. This point was argued prior to the Sullivan trial. Judge Jones ruled that The Times could be haled into state court to face the libel actions.

Both sides voiced confidence in the outcome of appeal.

Still ahead are suits by City Commissioner Frank Parks and by Alabama Gov. John Patterson.

All the suits are over an ad appearing in The Times seeking funds for the defense of Negro integration leader Martin Luther King in his perjury trial here.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 71

THE MONTGOMERY ADVERTISER FEB. 2, 1961

By Arthur Osgoode

Mayor Earl James won a $500,000 libel verdict from the New York Times Wednesday night after a Circuit Court jury deliberated for two hours and 10 minutes.

The verdict was also against four Alabama Negro ministers, co-defendants with The Times in the three day suit over charges made in an advertisement that appeared in The New York paper on March 29, 1960.

The four co-defendants were the Revs. S. S. Seay and Ralph Abernathy of Montgomery, J. E. Lowery of Mobile and Fred Shuttlesworth of Birmingham.

The verdict was the second success for the local law firm of Steiner, Crum and Baker, representing Montgomery City Commissioners in libel actions charging they were defamed in an ad picturing harsh police measures taken against Negro college students here.

James contended in the suit that he was defamed and held up to public ridicule and contempt and pictured as failing to perform his duties properly.

[fol. 1555] FINAL ARGUMENTS

In final arguments, defense attorney Eric Embry urged jurors not to be swayed on the segregation issues.

And he charged that: "Mayor James is the vehicle, in my opinion, for the aggrandizement of Mr. Nachman, Mr. Steiner and Mr. Baker."

He called the arguments of his opponents "blatant and apparent efforts to influence honest men. Pointing to possible community pressures, he told them: "You've got to be men to do the right thing."

He asked them not to allow their verdict to be influenced "because the people who run that newspaper don't have the same views on integration as you do."

But Embry concentrated most of his argument to contending that the language of the advertisement could not be interpreted as directed against the mayor.

James' attorneys, Roland Nachman and Bob Steiner, both pounded at the fact that The Times had not elected to base its defense on the truth of the advertisement.

"There's a perfect defense to any libel case, and that is truth," said Steiner.

"Everything in it (the ad) is a pack of lies and they know it."

He said The Times' attitude in accepting the ad was: "Let's get the money and forget the truth."

Nachman asserted that freedom of the press cannot be debased and demeaned into a license to lie."

And, like Steiner, he argued that the four Negro co-defendants could have cleared themselves of any suspicion of libel by writing a letter to James or to the New York Times disclaiming any connection with the ad.

The attorney for the four Negro ministers, Charles S. Conley, told the jury that attorneys for James had failed to produce "a single item of evidence" to show that they [fol. 1556] had any knowledge that their names were to be used on the ad.

And he suggested that they were named in the suit only because they were active in the fight to end segregation in the South.

The trial opened Wednesday morning with an angry statement from Judge Jones, who ordered the courtroom segregated and challenged Negro attorneys to test his action.

Jones had permitted integration the day before. But Wednesday his bailiff directed Negroes to move to one side of the courtroom. Four deputies stood outside the courtroom, ready to enforce the order.

Jones said his courtroom will be segregated "from this hour forward."

'ACCEPTS CHALLENGE'

"The judge presiding here this morning is ready for his judicial power and authority to be tested," he said. "He accepts the challenge of counsel for the four Negro defendants that, under the 14th Amendment he is without authority and powerless to direct how a trial shall be conducted."

He further declared that the 14th Amendment has no standing whatever in this court, it is a pariah and an outcast, if it be construed to hold and direct the presiding judge of this court as to the manner in which proceedings in the court, presided over by the elected constitutional representative of the people of Alabama, shall be conducted."

He pointed to the ninth and 10th Amendments to the U.S. Constitution as guaranteeing that rights not reserved to the federal government are delegated to the states of the union.

"Alabama and her sister states stand on the 10th Amendment," said Jones. "It is their buckler and their shield."

He attributed his action to "a studied effort by friends of the four defendants to pack the courtroom with members of their race."

Their purpose, he said, was "to test and challenge the right and power of the presiding judge to direct the seating of spectators in the courtroom . . ."

[fol. 1557] He further tongue-lashed the Negro attorneys for their objection to pronunciation of the word "Negro" by other attorneys and warned that further objections to such pronunciation would lead to their being found in contempt of court.

Witnesses Wednesday included Hardin Bancroft, secretary of The Times company, who maintained that he felt that statements in the ad were "substantially correct," with the exception of a statement alleging that the Alabama State College dining hall had been padlocked to starve students into submission.

SOME TRUTH

Bancroft was more adamant in his testimony than attorneys for The Times had been in presenting their case. He cited facts he said were known to the Times to support his contention and said there was at least some truth in the statements.

Earlier, the head of The Times advertising acceptability department, Vincent Redding, testified that he saw nothing in the ad when it was submitted to him to lead him to question its truth.

He said he accepted the ad on the basis of a long list of signers that included a number of stage and screen celebrities, as well as Mrs. Eleanor Roosevelt, Norman Thomas and Dr. Norman Vincent Peale.

Under cross-examination, he said he did not check to see if the facts related in the ad were correct or to verify that the names affixed to it had been approved.

FINAL WITNESS

Final witness was John Murray, a New York writer, who said he was one of three men who wrote the ad in question.

Murray said the names of the four Negro defendants were added to the ad, without their consent, by the organizer of the Committee to Defend Martin Luther King, Bayard Ruston.

Murray said Ruston decided to place the names of the Southern ministers on the ad to give it additional appeal to readers. He said Ruston assured him it would not be necessary to get the consent of the group, largely Southern Negro integration leaders, because: "They'll go along [fol. 1558] with this."

The ad sought funds to defend Negro integration leader Martin Luther King in his perjury trial here, in which he was subsequently acquitted.

It alleged that Negro students were expelled after singing "My Country 'Tis of Thee" on the Capitol steps, that police then ringed their campus with shortguns and tear gas, and that their dining hall was padlocked to break up their demonstrations.

A $500,000 judgment was awarded City Commissioner L. B. Sullivan in the last term of court in his libel suit over the same ad.

A similar $500,000 suit by Commissioner Frank Parks is to come up next term of court. Also pending is a million dollar libel suit over the ad by Gov. John Patterson.

The Times also faces a series of libel suits in the Birmingham area over a news story in which Times reporter Harrison Salisbury described a virtual wave of terror growing out of racial unrest.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 72.

THE MONTGOMERY ADVERTISER FEB. 1, 1961

By Arthur Osgoode

Negro and white spectators were intermingled in Circuit Court Tuesday as attorneys for Mayor Earl James rested their $500,000 libel case against the New York Times.

The trial was recessed by Judge Walter B. Jones at 5:30 p.m. after brisk cross-examination of Gerson Aronson, Times advertising salesman and first defense witness.

Aronson testified that he had accepted the ad, which described oppression of Negro students by Montgomery police, after reading it hurriedly.

[fol. 1559] 'NOT PRACTICAL'

But he declined under cross-examination to concede that it appeared at first reading to violate any of the standards set by the New York paper for advertising it accepts.

"I saw no reason to think that it was other than true," he said. He also said it "wouldn't have been practical" to check the veracity of the statements in the ad.

White spectators were interspersed with Negroes during Tuesday's proceedings. The number of whites varied roughly between half a dozen and a dozen, the number of Negroes between three and four dozen.

Jones announced that he was imposing federal rules governing courtroom procedure, and would allow spectators to enter and leave the courtroom only while a witness was not on the stand. Bailiff Lee Cook was stationed at the door to enforce the rule.

Cook also once went outside to order a former student of Alabama State College, Bernard Lee, to stop talking to other persons outside.

Attorneys for four Negro co-defendants with The Times said Lee, who was expelled from the local Negro college for taking part in student demonstrations, was expected to be a witness.

FINAL WITNESS

Mayor James took the stand as the final witness for his side. He said he "took exception" to the ad when it was first shown to him in his office by a newsman.

He said he felt that it referred to him, since he was responsible for the acts of local police.

Cross-examined by Times attorneys, the mayor conceded that no one has shunned him since the appearance of the ad. He said he believed his reputation was good, and "I trust it will always be that way."

Jones sustained objections against cross-examination of James by attorneys for the four Negro defendants when they asked if Montgomery police were used to support "the time-honored customs of the South."

[fol. 1560] The four defendants are all Alabama Negro ministers whose names appeared on the ad as endorsers. They deny having any knowledge that their names were being used. Two, the Revs. Ralph Abernathy and S. S. Seay, are of Montgomery. The other two, The Revs. Fred Shuttlesworth and J. E. Lowery, are from Birmingham and Mobile, respectively.

NOT ASSAULTED

Two earlier witnesses said that King was not assaulted by Montgomery police and that police made a vigorous effort to find who had bombed his home during the Montgomery bus boycott.

The ad over which James is suing charges that "southern violators" had assaulted King, arrested him seven times, and bombed his home. It sought funds with which to defend King in his perjury trial, in which he was subsequently acquitted here.

O. M. Strickland, a city policeman, said he arrested King and that he was not assaulted at the time. And E. Y. Lacy, retired city detective, told of vigorous efforts to find who had bombed King's home.

BROKE RULES

State School Supt. Frank Stewart also testified that statements in the ad describing the padlocked dining hall

at Alabama State College to "starve students into submission" were false. And he said students were expelled after a sit-in demonstration because they broke college rules.

Earlier in the trial, the last of a series of witnesses testifying to their interpretation of the ad in question took the stand. Carl W. Johnson, service station operator, said he believed the ad referred to the mayor and other city officials and implied violation of "the American way—treating people equal, giving them their rights."

Like other witnesses who had testified to their interpretation of the ad, he said he had known the mayor for years and conceded he knew of no damage to James' reputation here.

[fol. 1561]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 73

THE MONTGOMERY ADVERTISER
Feb. 23, 1961 By Arthur Osgoode

Four Negroes' Suit Names State, City Officials

Four Alabama Negro ministers, whose property is being attached to satisfy a half million dollar libel judgment, are asking a federal judge to halt what they describe as a comspiracy to deprive them of their constitutional rights.

The four—the Revs. Ralph Abernathy, S. S. Seay, Sr., Fred Shuttlesworth and J. E. Lowery—have asked U. S. District Judge Frank M. Johnson, Jr. to halt attachments of their property.

They have also asked that two suits pending against them by City Commissioner Frank Parks and Gov. John Patterson also be halted by court order.

The Negroes were co-defendants with The New York Times in two libel suits in which juries awarded half-million dollar judgments to Mayor Earl James and City Commissioner L. B. Sullivan.

TOTAL $2.5 MILLION

Together with the Parks and Patterson suits, the Times and the four Negroes are defendants in actions totaling $2,500,000.

The libel actions all arose from an ad in The New York Times, on which the names of the four ministers appeared as endorsers, attacking action of police and statue authorities in dealing with Negro demonstrations.

In the complaint filed this week in federal court, the four Negro defendants charge that their constitutional rights were violated in the libel actions and subsequent attachments of their property.

It named as defendants City Commissioners James, Sullivan and Parks of Montgomery, Governor Patterson, and sheriff's attaching the ministers property.

The restraining orders sought would hold up attachments and proceedings in the remaining suits until the issue is finally decided.

[fol. 1562]

FEDERAL JURISDICTION

The complaint maintained that the federal court had jurisdiction.

It recited activities of the four Negro ministers in combating segregation. It also recited events involving a sit-in demonstration at a snack bar in the courthouse, the subsequent expulsion of Negro students in Alabama State College, and a near riot arising from a Negro attempt to march on the State Capitol.

In each of these incidents, the suit held, the rights of peaceable assembly and petition for redress of grievances, guaranteed by the U. S. Constitution, were violated.

The complaint said the ad which appeared in The Times, inserted by supporters of the plaintiffs, sought to: (1) educate the public on social and political issues, (2) seek support for the Rev. Martin Luther King in his perjury trial, and (3) seek support for the plaintiffs and Negro students "in their peaceful efforts to end segregation. . . ."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 74

THE MONTGOMERY ADVERTISER

FEB. 22, 1961

CAR ATTACHED FROM NEGRO MINISTER SELLS FOR $400

A Buick automobile that belonged to the Rev. Ralph Abernathy brought $400 when sold Tuesday to partially satisfy a $500,000 libel judgment for City Commissioner L. B. Sullivan.

J. T. Terry was high bidder. Bidding started at $100. One Negro who was among the bidders went up to $325.

The auctioneering was handled by Deputy Sheriff F. H. Phelps, who attached the car.

Other property belonging to Abernathy and to the Rev. Solomon S. Seay, another local defendant in the libel suit, [fol. 1563] has been attached but the Abernathy car was the first piece of property to be sold.

Cars have also been seized that belong to the other two defendants, the Revs. Fred Shuttlesworth of Birmingham and J. E. Lowery of Mobile.

The four Negro ministers, co-defendants with the New York Times in libel actions by Sullivan and Mayor Earl James, failed Monday to get a federal judge to prevent seizure of their property.

U.S. District Judge Frank M. Johnson, Jr. ruled in Opelika that they must exhaust their remedies in state courts before he can enter the case.

Attachment of their property began when their attorneys failed to continue a motion for a new trial and allowed it to expire.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 75

THE MONTGOMERY ADVERTISER
NOVEMBER 2, 1960

(ONE PHOTOGRAPH ATTACHED TO ORIGINAL.)

[fol. 1564]

WITNESSES SAY AD REFLECTED ON SULLIVAN

By Arthur Osgoode

The $500,000 libel suit of Montgomery City Commissioner L. B. Sullivan against the New York Times opened in Circuit Court Tuesday, with most of the testimony bearing on whether Sullivan was sufficiently identified in an advertisement to have been libeled.

Defense attorneys made little effort to back up the truth of statements in the advertisement, which charged oppressive treatment of demonstrating Negro students.

The advertisement in question, which also brought suits by the other two city commissioners and Gov. John Patterson, sought funds to defend the Rev. Martin Luther King in his perjury trial here.

Attorneys for Sullivan presented a series of witnesses who testified they believed statements in the advertisement reflected on Sullivan and the Montgomery police.

Defense attorneys in cross examination of several of the witnesses got them to say that they personally did not believe the statements and that they thought no less of Sullivan after having read them.

After lengthy questioning of witnesses by defense attorneys as to connections with the plaintiffs or their attorneys, a jury of 12 white men was selected.

Two Negroes called for jury service were the first to be stricken by the attorneys for Sullivan.

In opening arguments, attorney Roland Nachman, representing Sullivan, said the suit was designed not only to compensate Sullivan for injury to his reputation, but "to deter these defendants from ever doing anything like this again."

He said he expected evidence would show The Times failed to make an asked-for retraction to Sullivan, but that a retraction to Patterson when demanded by the Governor.

As to Sullivan's not being identified by name, he said it was "not necessary that the ad name Mr. Sullivan." And he pointed to references to alleged police acts which he said clearly reflected on Sullivan in the performance of his duties.

[fol. 1565]

VIGOROUS DENIAL

Eric Embry, representing the Times, vigorously denied the advertisement charged "misconduct to Sullivan. Not by "the wildest stretch of inference" could it be construed as referring to the police commissioner, he said.

He said the New York paper "never had any first hand knowledge of whether the statements were true or false," and published them after they were received from a reputable advertising agency.

Embry said a retraction was made in the case of Gov. Patterson because of his high position in the state, though the Times did not believe he had been libeled.

The plaintiff's case opened with a reading of the advertisement in question by Calvin Whitesell, representing the city commission.

SHARP PROTEST

The reading brought a sharp protest from Negro attorney V. Z. Crawford of Mobile, representing four co-defendants, four Negro ministers, the Revs. Ralph Abernathy, Solomon S. Seay, Sr., F. L. Shuttlesworth, and J. E. Lowery.

Crawford objected to what he said was the substitution of the word "nigger" for Negro, Whitesell said he was only using the pronunciation he had used all his life.

The pertinent sections in the advertisement referred to "truckloads of police armed with shotguns and tear gas" ringing the Alabama State College campus to quell student demonstrations, and to expulsion of student leaders after a gathering on the Capitol steps during which Negroes sang "My Country, 'Tis of Thee."

Still another paragraph says: "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with perjury—a felony under which they could imprison him for 10 years.

[fol. 1566]

EDITOR WITNESS

First witness for Sullivan was Grover C. Hall, Jr., editor of The Advertiser, who said that after reading the statements concerning Montgomery, "I think I'd associate it with the city government—the city commissioners."

Asked whether the statements in the advertisement would affect his opinion of the commissioners, Hall referred specifically to the charge that the lunchroom at Alabama State College had been padlocked to starve students into submission.

Hall said he thought starvation was an "indefensible" form of reprisal.

Hall was cross-examined by Crawford on whether he was more widely informed than ordinary readers, so that his was an "expert opinion." He also drew from Hall the statement that at the time the advertisement appeared his relations with Sullivan were not good, though they have since improved.

Succeeding witnesses were real estate and insurance man Arnold Blackwell, Advertiser Assistant Editor William McDonald, clothing store manager Harry Kaminsky, service station operator William M. Parker, Jr., and H. M. Price, Sr., operator of a food service equipment business.

PERSONAL FRIEND

Blackwell, Kaminsky, Parker, and Price testified that they knew Sullivan personally, and they thought the advertisement would have injured him in their eyes if they had believed statements regarding actions of local police.

Price said he would have believed Sullivan was running

"a young gestapo" in Montgomery and Parker that Sullivan was using "strong-arm" tactics.

Embry questioned each on his personal relations with Sullivan and on whether each thought Sullivan was referred to in specific statements in the advertisement.

Each of the witnesses was questioned on whether padlocking of the college lunchroom or expulsion of the students could be regarded as chargeable to Sullivan under cross-examination.

[fol. 1567] Embry also questioned Kaminsky closely on whether he believed the police commissioner could be held accountable for all misconduct of police officers.

Kaminsky replied that he thought the police commissioner was accountable for actions of subordinates.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 76

THE MONTGOMERY ADVERTISER

May 17, 1960

THE TIMES ACKNOWLEDGES ERROR

The Governor of Alabama called The New York Times a liar, The Montgomery Advertiser and the Montgomery City Commission called The Times a liar.

The Times has now admitted it printed lies about Montgomery, has retracted and apologized.

The discreditable, fictional character of The Times content has been established and half-admitted by The Times.

The Times can hardly be expected to go back to 1956 and make an omnibus correction of all its distortions about Montgomery as not even the Sunday Times is large enough for that.

As for the prominent American and Broadway dudes whose names were married to the lies in the Times advertisement, they evidently feel no shame and are unheard from. In the case of people such as Dr. Harry Emerson Fosdick and Elmer Rice, this surprises The Advertiser.

There is nothing new about such distortions, they are an

old story to Alabamians. This just happens to be the time when it was possible to yank a curb bit against a mendacious jawbone.

In one sense there is consolation for Alabamians and Southerners in the results of the episodes, The Times is, if not the world's greatest paper, then certainly its most important. It has an exalted reputation for truth and re-
[fol. 1568] straint and its voice is heard internationally. It hurt the state to be misused in The Times, but the proof and acknowledgement of misrepresentation are many times more conspicuous than would be in any other publication.

Newspapers throughout the country will mark it well that The Times was forced into a humiliating acknowledgement of inaccuracy and unfairness. For them this will be a flaring caution light.

Perhaps some will speculate whether if Salisbury's Birmingham reporting was deceptive and deficient if Salisbury's vaunted Moscow reporting was likewise.

If The Times can't, or won't, gather and print the truth about American cities, how can it be relied upon to gather and print the truth about remote London, Paris, Belgrade, Warsaw, Budapest and Johannesburg?

One concession is cheerfully offered. The Times made corrections in full and manly form. Time magazine, which is much more corrupt plus vicious, would never have made such a correction. Time's cynical unwillingness to make corrections is perhaps the rottennest aspect of its morality.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 77

THE MONTGOMERY ADVERTISER APR. 7, 1960

WILL THEY PURGE THEMSELVES?

There are voluntary liars, there are involuntary liars.

Both kind of liars contributed to the crude slanders against Montgomery broadcast in a full-page advertisement in The New York Times March 29.

And its up to The New York Times and the involuntary liars to purge themselves of their false witness.

The Times boasts that it screens advertisements to eliminate what is indelicate or in bad taste. Perhaps demonstrable lies will at some future time be screened and found unfit for print.

[fol. 1569] This advertisement was sponsored by the "Committee To Defend Martin Luther King And The Struggle For Freedom In The South." And of course it was an appeal for cash contributions of the kind now in question on the Reverend Doctor's state income tax return.

Among other things, the ad contains this statement;

"In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truck loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

Lies, Lies, Lies—and possibly willful ones on the part of the fund-raising novelist who wrote those lines to prey on the credulity, self-righteousness and misinformation of northern citizens.

The Republic paid a dear price once for the hysteria and mendacity of abolitionist agitators. The author of this ad is a lineal descendant of those abolitionists and the breed runs true.

On the committee whose names are affixed as sponsors of the propaganda are some distinguished persons, such as Dr. Harry Emerson Fosdick, Elmer Rice and Norman Thomas. Such ones were victimized and we should think they will deem it a duty to their own honor to test The Advertiser's perjury charges and cleanse their names.

Others of the committee are just corner pick-ups from the Broadway marquee such as Harry Belafonte, Marion Brando, Earth Kit, Shelley Winters and Mrs. Roosevelt. They, of course, just came along for the ride and it probably is not possible to excite their interest in a thing so homely as truth.

But The Advertiser is going to have to revise some estimates if committeemen such as Dr. Fosdick, Rice and Thomas and The New York Times do not feel called upon to ascertain whether The Advertiser is correct in asserting their names are married to a slanderous lie.

As for the Reverend Doctor King, let the people of Montgomery—colored and white—judge him. People here know what happened. King knows what happened. It may be [fol. 1570] that he never saw the ad before publication. If so, let white and colored alike see what King does to unwork this slander in his name.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 78

ALABAMA JOURNAL APR. 5, 1960

LIBERALS APPEAL FOR FUNDS TO DEFEND M. L. KING

Sixty prominent liberals, including Mrs. Eleanor Roosevelt, have signed a full-page advertisement in The New York Times appealing for contributions to "the Committee to Defend Martin Luther King and the Struggle For Freedom In The South."

King, the integration leader and former pastor of Dexter Avenue Baptist Church here, is scheduled to go on trial in May on two idnictments charging him with perjury in filing state income tax returns.

The Negro Baptist minister is now living in Atlanta.

The latest available published rate schedule by The New York Times indicates that the price of such an ad would be $5,297.60. This is about $1,300 more than the bond which King made on the charge.

The list of signers of the ad includes 17 entertainers, both Negro and white. These include Harry Belafonte, the Negro singer; Marlon Brando, screen actior; Nat King Cole, Negro ballard singer; Sammy Davis, Jr., Negro popular singer; Dorothy Dandridge, Negro actress; Anthony Franciosa, screen actor; Van Heflin, screen actor; Mahalia Jackson, Negro gospel singer; Eartha Kitt, Negro

singer; Hope Lange, screen actress; Viveca Lindfors, stage and screen actress; Don Murray, screen actor; Sidney Poitier, screen actor; John Raitt, stage and screen singer; Robert Ryan, screen actor; Hope Stevens, screen actress; and Shelley Winters, screen actress.

OTHERS ON LIST

Other prominent names appearing on the list include Mrs. Roosevelt, widow of the later President; Mrs. Ralph Bunche, [fol. 1571] wife of the Negro diplomat; Dr. Harry Emreson Fosdick, the noted Methodist clergyman; Norman Thomas, American socialist leader, and Jackie Robinson, the Negro athlete.

Also appearing on the list are the names of several Southern Negro ministers, including the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr. of Montgomery.

The ad says in part:

"Obviously, their real purpose (in charging King with perjury) is to remove him physically as the leader to whom the students and millions of others look for guidance and support, and thereby intimidate all leaders who may rise in the South."

WAVE OF TERROR

Leaders of the integration movement, the ad says, are being subjected to "an unprecedented wave of terror."

There was one misstatement of fact in the ad, and another could not be verified.

The ad said Negro student leaders from Alabama State College were expelled "after students sang 'My Country, 'Tis of Thee' on the State Capitol steps." Actually, the students were expelled for leading a sit-down strike at the courthouse grill.

The ad also states:

"When the entire student body protested (the expulsion) to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

Authorities at the college said "there is not a modicum of truth in the statement." They pointed out that registra-

tion for the spring quarter was only slightly below normal and they deny that the dining hall was padlocked.

Neither Seay nor Abernathy could be reached for questioning about the padlocking statement.

[fol. 1572]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 79

ALABAMA JOURNAL APR 9, 1960

CITY DEMANDS RETRACTION OF AD IN TIMES

GALLION SAYS HEAD OF SPONSORS HAS MORALS RECORD

Montgomery City Commissioners have requested a retraction by The New York Times for charges carried in a full-page advertisement March 29.

This could be a preliminary to possible damage suits against the newspaper.

The advertisement was sponsored by the "Committee to Defend Martin Luther King," and seeks contributions to help pay the Negro integration leader's legal expenses in connection with a suit pending against him.

UNDER INDICTMENT

King; minister of an Atlanta, Ga., Negro Baptist Church, has been indicted on a perjury charge in connection with his Alabama state income tax returns.

Atty. Gen. MacDonald Gallion and other state officials have denounced the advertisement for its claims about treatment of Negroes in Alabama.

Gallion said it contained "vicious, unfounded and malicious lies."

LED BOYCOTT

The Negro minister was a leader in the mass Negro boycott against segregated city buses in Montgomery five years ago.

Among those endorsing the fund raising campaign and whose names are listed in the advertisement are Mrs.

Franklin D. Roosevelt, actor Marlon Brando, singer Harry Belafonte, actress Shelley Winters and A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters.

TIMES IS SILENT

In New York, the Times said it had no comment on the [fol. 1573] demands for a retraction.

At Birmingham, where Gallion is attending a meeting of securities administrators, the attorney general said one of the sponsors of the advertisement had a record of sex perversion.

Gallion said Bayard Rustin, a Negro integration leader, was convicted on such a charge at Pasadena, California in 1953.

Rustin could not be reached immediately in New York for comment. He is executive director of the group which sponsored the advertisement.

60-DAY TERM CITED

Gallion said Rustin was sentenced to 60 days in Los Angeles County on conviction of a sex perversion charge.

Gallion said in a statement that sponsors of the advertisement subscribed to "vicious, untrue facts about Alabama authorities without checking backgrounds of truth."

"In the light of events I feel compelled to reveal the record of Bayard Rustin."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 80

ALABAMA JOURNAL APR 8, 1960

GALLION PLANS TO TAKE ACTION ON TIMES AD

BIRMINGHAM (AP)—Alabama Atty. Gen. MacDonald Gallion says he will recommend legal action against sponsors of a New York newspaper advertisement critical of Alabama.

Gallion said the advertisement, published earlier this week, contains "vicious, unfounded and malicious lies" about Alabama's action in recent racial incidents.

He said that after his investigation is complete he will recommend to Gov. John Patterson that the state consider legal action against the sponsors of the advertisement.

[fol. 1574] Gallion referred to an advertisement sponsored by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

RAISE FUNDS FOR KING

The committee was organized to raise funds to help the Rev. Martin Luther King, Jr., a Negro integration leader, fight a perjury charge in Alabama.

King, a Baptist minister now living in Atlanta, is accused of turning in a false Alabama state income tax returns.

Gallion attending a meeting of Southern securities administrators in Birmingham, said in a statement Thursday.

"We are sick and tired of warped and slanted attacks on Alabama and the South and it is particularly reprehensible to be the subject of this lie attack."

CHARGES SAID FALSE

Gallion said "Charges in the advertisement that the dining room at Alabama State College was padlocked recently are downright lies that reflect on the integrity of the people of this state as a whole."

He said he had investigated these and other charges contained in the advertisement and found them "completely untrue and unfounded."

In Montgomery, Secretary of State Bettye Frink said sponsors of the advertisement should be prosecuted "for falsifying the State of Alabama with lies. . . ."

Mrs. Frink charged that circulation of the newspaper through the mail constitutes "using the mails to defraud inasmuch as the ad contains misleading statements."

[fol. 1575]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 81

ALABAMA JOURNAL APRIL 9, 1960

NOT THE FIRST LIE ABOUT SOUTH

Now that Montgomery is once again the victim of wholly false stories published by a group of Negroes and Mrs. Roosevelt in the New York Times, we must remember the trials our forefathers endured years ago.

Harriet Beecher Stowe, a poor frustrated wife and sister of Henry Ward Beecher, wrote a tissue of falsehood about the South though she had never been any further South than Cincinnati.

It was the kind of falsehood people in those days wanted to hear and they got an earful from Uncle Tom's Cabin. Great preachers, poets and literary men of New England did not hesitate to tell the baldest falsehoods about the South and its treatment of Negroes.

Another great abolition preacher linked the South in his hateful phrase with the Democratic party as the party of "Rum, Romanism and Rebellion," and defeated a candidate for election to the presidency.

So there is nothing new when the South is traduced and misrepresented. Unfortunately, there is nothing we can do about it.

Even a war did not stop the lies about the South.

A thing cannot be sued for libel for the laws do not recognize libel of an inanimate thing; libel can be only against persons or individuals.

If Montgomery could show property injury or damage for recovering in the courts, but the signers of the latest form of "the big lie" probably could not pay judgment if one was awarded.

It must be very disappointing to regular readers of The New York Times, one of the world's really great newspapers, to find it has been willing to lend its columns for such a page of falsehood as that published the other day

and signed by money-beggars who want to defend such a despicable character as Martin Luther King in the courts and to save him from the penalties of his derelictions.

[fol. 1576]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 82

ALABAMA JOURNAL APRIL 16, 1960

B'HAM OFFICIALS TO SUE N. Y. TIMES

BIRMINGHAM (AP)—Birmingham's City Commissioners have announced they will file suits as individual's against The New York Times for articles critical of Birmingham in its racial troubles.

And Atty. Gen. MacDonald Gallion says his office is ready to make recommendations concerning possible damage action over an advertisement in The Times critical of Montgomery.

Birmingham's Police Commissioner, Eugene Conner, called the articles "cheap attempts to smear our city and state."

Mayor James W. Morgan said the city's three Commissioners decided Friday to file the suits in Circuit Court. He said the cost would be borne by the commissioners.

The other commissioner joining in the action is Street Commissioner J. T. Waggoner.

Morgan said a Birmingham law firm already has been retained.

The articles appeared in the April 8-9 editions of The Times under the byline of Harrison E. Salisbury. They pictured Birmingham as a city where telephones are tapped, mail is intercepted and opened, and where "the eavesdropper, the informer, the spy have become a fact of life."

The commissioners said they have been advised that they possibly may recover punitive damages because they are elected to uphold Birmingham laws which the articles intimated had not been enforced.

Morgan said "We think the stories were so unfair and untrue in so many respects that they were a reflection against people of Birmingham, both white and black."

"I'm sure they are resented by both races," he said.

The mayor said no figure has been set as to the amount sought.

[fol. 1577] The commissioners said the suit would be filed in state court because the newspaperman who wrote the stories being questioned visited Alabama.

Both the morning Birmingham Post-Herald and the evening Birmingham News published the Salisbury stories in full, and criticized them editorially.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 83

ALABAMA JOURNAL APRIL 19, 1960

TIMES REVEALS CRITICAL LETTERS

NEW YORK (UP)—The New York Times said today it had received about 28 letters from Alabama and two from former Alabamans about the story critical of Birmingham.

The newspaper said of the letters received, 15 to 18 could be considered critical of reporter Harrison Salisbury, who said Birmingham was gripped in racial hatred and fear.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 84

ALABAMA JOURNAL APRIL 15, 1960

SOURCE SAYS GALLION TO URGE AD SUIT

By Donald F. Martin United Press International

Alabama Atty. Gen. MacDonald Gallion is expected to recommend that a libel suit be filed against the New York Times in connection with an advertisement soliciting funds

for the legal defense of Negro integrationist Martin Luther King, Jr.

Close sources on Capitol Hill said today Gallion will [fol. 1578] make the recommendation to Gov. Patterson Monday when the chief executive returns from a trip to Puerto Rico.

The sources said Gallion probably would recommend that one or perhaps two state agencies file the suit with the attorney general's office handling the legal work. The sources said the state agencies probably would be either the State Board of Education or the Board of Trustees for Alabama State College for Negroes here. Or both.

REPORT BEING DRAFTED

A spokesman in the attorney general's office declined to comment on the report other than to say "it is being drafted at the present time. It will be presented to the governor Monday."

Gallion undertook investigating the possibilities of a libel suit shortly after the full-page advertisement appeared March 29. The governor has not publicly discussed the ad which created a storm of criticism throughout the state.

Sixty prominent liberals, including Mrs. Eleanor Roosevelt, signed the ad appealing for contributions to "the Committee to Defend Martin Luther King and the Struggle for Freedom in the South." The list of signers included 17 entertainers, both white and Negro.

King, former president of the Montgomery Improvement Assn. which spearheaded the successful Negro boycott of buses here four years ago, is scheduled to go on trial in Circuit Court here next month on two indictments charging him with perjury in filing state income tax returns. The Negro Baptist minister recently moved to Atlanta where he directs the Southern Christian Leadership Conference.

The ad says in part:

"Obviously, their real purpose is to remove him (King) physically as the leader to whom the students and millions of others look for guidance and support, and thereby intimidating all leaders who may rise in the South." The ad says

leaders of the integration movement are being subjected to "an unprecedented wave of terror."

The ad also says "when the entire student body protested (the expulsion of nine students for participating in a sit-down demonstration at the white snack bar at the county [fol. 1579] courthouse) to state authorities by refusing to re-register (at Alabama State College), their dining hall was padlocked in an attempt to starve them into submission."

College authorities denied the dining hall was ever closed.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 85

ALABAMA JOURNAL APRIL 17, 1961

REPORT DUE ON TUESDAY ON LIBEL SUIT

Alabama Atty. Gen. MacDonald Gallion has decided to withhold his report on whether to file a libel suit against The New York Times until the Alabama School Authority meets Tuesday.

Ed Strickland, Gallion's executive secretary, said the attorney general thought it would be better to present his recommendations to the authority meeting which would be attended by Gov. Patterson and other state officials, including Finance Director Charles Meriwether and School Superintendent Frank Stewart.

Gallion is expected to recommend that a suit be filed against The Times in connection with an advertisement soliciting funds for the legal defense of the Rev. Martin Luther King, Jr.

Capitol Hill sources said Gallion probably would recommend that one or perhaps two agencies file the suit with the attorney general's office handling the legal work. The sources said the state agencies probably would be either the state Board of Education or the board of trustees for Alabama State College for Negroes here, and maybe both.

Gallion undertook investigating the possibilities of a libel suit shortly after the full-page advertisement appeared in The Times March 29. The report was completed during the weekend.

[fol. 1580]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 86

ALABAMA JOURNAL APRIL 18, 1960

UNWORTHY NEWSPAPER POLICY

The New York Times is a great newspaper, but Shakespeare wrote long ago:

O, it is excellent
To have a giant's strength;
but it is tryannous
To use it like a giant.

The Times these days is showing shortcomings of which even the old Police Gazette would not be guilty.

The Times' recent attacks on Alabama, Montgomery and Birmingham, are unworthy of any self-respecting newspaper.

Its full page advertisement signed by Eleanor Roosevelt, Ralph Abernathy et al, to raise $200,000 for M. L. King to defend himself against income tax fraud in Alabama is a pack of lies from beginning to end. Without some sinister purpose, no newspaper would print such libelous and scandalous material without confirming its contents.

The Times' recent slanderous dispatches from Birmingham are so full of personal venom, exaggeration and untruth as to be a sinister reflection upon any newspaper printing them.

The Times' refusal to print the dignified, scholarly and irrefutable Putnam letter to President Eisenhower is unexplainable except on the grounds of fixed determination to turn its back on truth about the South and the relations between the white and black races in this region.

There is something sad about a great newspaper's getting down in the gutter and wallowing in lies—bold lies, palpable lies, deliberate lies.

Birmingham and Montgomery authorities are discussing the advisability of bringing damage suits or libel suits against the newspaper which has become a smearer. This is a doubtful method of showing resentment.

[fol. 1581] In the first place the laws usually hold that only a person, not a thing, can be libeled.

As for collecting damages for what the Times has done, it would be impossible to show that Alabama or any of its cities have been damaged by the publications in the Times.

The Times' new policy may go big in Harlem, but Alabama, from one end of the state to the other is growing so rapidly, is acquiring new residents and industries so rapidly that it would be hard for anyone to prove the state and its cities have suffered any damage.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 87

ALABAMA JOURNAL APRIL 19, 1960

GALLION HOLDING RECOMMENDATION FOR SCHOOL BOARD

Atty. Gen. MacDonald Gallion again refused to reveal his recommendations on whether the State Board of Education should sue The New York Times for printing an advertisement soliciting funds for the legal defense of Martin Luther King, Jr..

Gallion told newsmen his report was "a matter for the State Board of Education" and that he would not discuss his recommendations at today's meeting of the Alabama Education Authority.

Gallion said his report was complete but he would not release it because of "courtesies to the proper authorities." The attorney general said he planned to discuss his recommendations with Gov. Patterson and School Superintendent Frank Stewart either today or tomorrow.

Gallion is expected to recommend that the libel suit be filed against the giant New York newspaper.

Meanwhile, sources close to the Montgomery City Commission said the three commissioners probably would also file a libel suit against the newspaper for printing the March 29 ad.

However, Police Commissioner L. B. Sullivan and assist- [fol. 1582] ant city counsel Calvin Whitesell would not comment on whether the commissioners were considering a suit. Whitesell said only such a suit would have to be filed by the three men as individuals and not as representatives of the city.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 88

ALABAMA JOURNAL APRIL 20, 1960

CITY OFFICIALS SUE N. Y. TIMES

A half-million dollar libel suit has been filed in Circuit Court here against The New York Times by Montgomery's three city commissioners who claim they were defamed in an advertisement that solicited money to defend the Rev. Martin Luther King, Negro leader, when he goes on trial for perjury.

Mayor Earl D. James, Commissioner Frank Parks and Commissioner L. B. Sullivan also named the Revs. Ralph Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery as defendants in the suit, filed yesterday afternoon.

Abernathy and Seay, Montgomery ministers, were active with King in activities of the Montgomery Improvement Assn. and Shuttlesworth is a Birmingham minister active in integration movements. Lowery is an integration leader in Mobile and al of their duties.

FULL-PAGE AD

March 29 editions of The Times published the full-page ad seeking funds to help King defend himself against a charge of falsifying state income tax returns.

James, Parks and Sullivan charged that the ad's version of incidents surrounding recent demonstrations by Montgomery Negro college students subjected them to ridicule and embarrassment.

They contended that the advertisement contained untrue material which reflected on them personally and on performance of their duties, and that The Times refused their demands to print a retraction.

[fol. 1583] Among the disputed facts in the ad:

"In Montgomery, Ala., after students sang 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State college campus.

"When the entire student body protested to state authorities by refusing to re-register, their dining room was padlocked in an attempt to starve them into submission."

CITES OTHER TROUBLES

The ad also alluded to racial troubles in a number of other southern cities, and suggested that the perjury action against King was aimed at curtailing his integration activities.

All four co-defendants with the newspaper have been active in racial dealings. Abernathy succeeded King early this year as president of the pro-integration Montgomery Improvement Assn.

King, who now lives in Atlanta, organized the group four years ago to launch the Negro boycott climaxed by integration of Montgomery city buses. Seay is the association's executive secretary.

Shuttlesworth, head of the Alabama Christian Movement for Human Rights, was convicted of conspiracy earlier this month in the wake of Negro sit-in demonstrations in five Birmingham eating places.

The controversial Times ad which they signed was sponsored and paid for by "the Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

OTHER SIGNERS

Its other signers included such prominent persons as Mrs. Eleanor Roosevelt, Marlon Brando, Shelley Winters, Eartha Kitt and Harry Belafonte.

Suits were filed individually on behalf of James, Parks and Sullivan. The law firms of Scott, Whitesell, and Scott, and Steiner, Crum and Baker are representing the city officials.

Similar suits have been filed against The Times by Birmingham's commissioners for a series of articles dealing with the racial situation in the South.

[fol. 1584] Although the suit was filed in Circuit Court, the newspaper can demand transfer to Federal Court because the plaintiffs and defendants live in different states. Usually in such cases the transfer is requested.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 89

ALABAMA JOURNAL APRIL 21, 1960

GOVERNOR TO RULE ON LIBEL SUITS EARLY NEXT WEEK

Gov. John Patterson is expected to reveal early next week whether he and the other members of the State Board of Education will sue The New York Times for libel.

Atty. Gen. MacDonald Gallion recommended to him yesterday that board members file libel suits because of an advertisement which criticized handling of racial incidents in Alabama.

"We have confirmed . . . that many of the statements were complete lies," Gallion said after investigating contents of the full-page ad published in The Times March 29.

Of his study into the feasibility of taking the issue to court, Alabama's chief legal officer said: "My conclusions and recommendations were definite. File a multi-million-dollar law suit."

CITY OFFICIALS FILE SUIT

The newspaper already faces three libel suits filed by Montgomery's city commissioners as an outgrowth of the same ad. The suits seek damages totaling $1,500,000.

After a lengthy conference with the governor, during which he recommended suing The Times, Gallion pointed out what he called "complete lies" in the controversial advertisement.

Among them was the untruthful and libelous statement, for example, that state authorities padlocked the dining hall of the Negro Alabama State College in an attempt to starve Negro students into submission," he declared.

"This and other vicious charges certainly defame Ala- [fol. 1585] bama (and the only practical method to publicly expose the widely published matter . . . is before the bar of justice."

STATE HAS NO SUIT

The attorney general said he informed Patterson that the state of Alabama itself has no cause of action, but that individual members of the State Board of Education do. Patterson is board chairman.

Purpose of the embattled ad was to raise money to help pay legal expenses of the Rev. Martin Luther King, Jr. The Negro leader will be tried here next month on charges of falsifying state income tax returns.

"The committee to defend Martin Luther King and the struggle for freedom in the South" paid for the ad, signed by such personages as Mrs. Eleanor Roosevelt, Marlon Brando, Shelley Winters, Martha Kitt and Harry Belafonte.

Three $500,000 libel suits against The Times and four Negro integration leaders who also signed the ad were filed Thursday by Montgomery's Mayor Earl D. James and City Commissioners Frank W. Parks and L. B. Sullivan.

Negroes named in the suits are the Rev. F. L. Shuttlesworth of Birmingham, The Rev. J. E. Lowery of Mobile, and the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr., both of Montgomery.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 90

ALABAMA JOURNAL APRIL 22, 1960

(REPLY TO N. Y. TIMES) NOT A CITY OF RACE TERROR

(CHARLESTON NEWS AND COURIER)

In two articles on Birmingham, Ala., The New York Times has plumbed new depths of reportorial unfairness. The articles, written by Pulitzer Prize winning reporter Harrison E. Salisbury, represent a shocking journalistic objectivity.

[fol. 1586] Citizens of Birmingham, we are told, are aroused and indignant at the defamation of their city. Well might they be, for the articles present the big Alabama steel city as worse than any of the Soviet cities Mr. Salisbury wrote about when he was Moscow correspondent for the Times.

According to Mr. Salisbury, Birmingham is a city where "every reasoned approach" to the race problem "has been fragmented by the emotional dynamite of racism, reinforced by the whip, the razor, the gun, the bomb, the torch, the club, the knife, the mob, the police and many branches of the state's apparatus." He said that "the eavesdropper, the informer, the spy have become a fact of life." Birmingham police are represented as a terrorist group ruled by race hatred. The Ku Klux Klan is depicted as riding high, so much so that suburbanites know which of their neighbors belong to the KKK.

In short, Mr. Salisbury's articles present Birmingham as a hideous community of lawlessness, terror, and injustice. He found somebody who called it the Johannesburg of the United States and gleefully passed on the phrase.

John Temple Graves, distinguished Southern newspaper writer who lives in Birmingham, informs us that the Salisbury articles are completely without foundation. Birmingham's police chief, he said, is tough in his handling of all groups formenting riots, "but he is determined to be as fair as he is tough."

Mr. Graves also pointed out that the Salisbury articles failed to mention that five Klan members, who attacked and mutiliated a Negro last year, were convicted in a Birmingham court and sentenced to 20-year jail sentences.

"Not even Atlanta," he said, "with all its talk of liberalism, has been as summary in its punishment of lawbreakers."

Terming the Salisbury articles "an arrant lie," Mr. Graves said that The New York Times reporter, to the best of his knowledge, did not talk with prominent white leaders. The Birmingham Post-Herald disclosed in an editorial Thursday that Mr. Salisbury had not discussed racial conditions in Birmingham with newspapermen in that city. [fol. 1587] Granting his skill in the use of words, we find Mr. Salisbury's approach to race relations in the South more like the propogandist's than the objective reporter's. If The Times is intent on stirring revolution in the South, as it did with its promotional articles on Fidel Castro in Cuba, it is going about its business with determination and skill.

Such distorted pictures of the South do the American Republic no good in the eyes of the world. They may bring suffering to peaceful citizens of both races in the South.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA.

DEFENDANT'S EXHIBIT No. 91

ALABAMA JOURNAL APRIL 26, 1960

IT'S THE SAME THING
(GREENSBORO WATCHMAN)

We refuse to get excited over the articles of Harrison Salisbury in The New York Times which have attacked Alabama in general, and Birmingham in particular. These articles were vicious; they were based on falsehoods and half-truths—but as far as we are concerned, it's old hat. We are used to this treatment. We can remember, less than two decades ago, when such apsotates as Charles Feidelson ruled over the most influential editorial pages in Alabama,

and devoted a large part of their time to harassing the Black Belt. We were denounced, and held up to scorn all over the south....

Things are different now. The Black Belt maintains its compassionate view of the Negro, on his way up, and deserving of our help in the process. Our relations may not be quite as good as they were prior to 1954, but they are better than in any other part of Alabama. We have had no trouble and we expect none. By generations of experience, we have learned to live in peace as two races; we have our agitators, but we also have in our midst a strong group of white people—perhaps a majority—who refuse to con- [fol. 1588] done violence and at the same time demand a fair chance for the Negro, based on his own abilities. We also have a strong group of Negroes who are willing to work out their destiny on their own merits, within their own racial structure.

Birmingham stands today where we stood two decades ago—a people vilified, misinterpreted and misunderstood. But there is no need to get angry; there is a real need for patience. A few years from now, we may see Washington, New York and Chicago—all with racial problems which they don't know how to solve—in the same position which we find Birmingham today—harassed and vilified by people who are safely removed from the scene of the trouble. It is human nature when people who know the least about a problem are the ones who presume the greatest knowledge in solving it.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 92

ALABAMA JOURNAL APRIL 28, 1960

GOVERNOR PLANS TO SUE TIMES FOR AD LIBEL

"I felt personally defamed," says Gov. John Patterson of plans to file a libel suit against the New York Times and four Negro integration leaders.

The governor revealed Wednesday that he will sue for a "substantial sum" in damages because of an advertise-

ment, which criticized handling of Alabama racial problems, published in The Times March 29.

Patterson told a news conference that he plans to file suit in state court as an individual, but had not arrived at the amount of damages to be sought.

In New York, The Times declined to comment on the governor's announcement.

AFTER TUESDAY

Word on the lawsuit will begin after Tuesday's election, [fol. 1589] he said, because his attorney, Public Service Commissioner Ralph Smith, is running for delegate-at-large to the Democratic National Convention.

"I have made a considerable study of the advertisement . . . and have come to the conclusion the ad was false, malicious and constitutes a defamation of the citizens of Alabama and particularly to the state officials," the governor declared.

"I have decided to sue the New York Times along with the four Negro rabblerousers who live in Alabama who signed the ad," he said.

NEGROES NAMED

The four Negroes he named—all racial leaders—are the Rev. J. E. Lowery of Mobile, the Rev. F. L. Shuttlesworth of Birmingham; and the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr., both of Montgomery.

Patterson said he was especially upset over the ad's treatment of the statement that the cafeteria at Alabama State College was padlocked last month in an effort to starve demonstrating Negro students into submission.

"That was an absolute lie," he declared, "and I think the New York Times knows that was a lie."

Disclosure of the governor's plans came after Atty. Gen. MacDonald Gallion recommended litigation by members of the State Board of Education, of which Patterson is chairman.

IN KING'S DEFENSE

The full-page ad was sponsored by a committee raising funds for legal defense of the Rev. Martin Luther King,

Jr., who faces trial here next month on charges of falsifying state income tax returns.

Because of the ad, three $500,000 libel suits against The Times and the four Negroes already have been filed by Montgomery's Mayor Earl D. James and City Commissioners L. B. Sullivan and Frank W. Parks.

All four co-defendants with the newspaper have been active racially. Abernathy succeeded King early this year as president of the pro-integration Montgomery Improvement Assn.

Now living in Atlanta, King organized the MIA four [fol. 1590] years ago to spearhead the Negro boycott which led to integration of Montgomery city buses. Seay is the MIA's executive secretary.

Shuttlesworth was convicted of conspiracy early this month in the wake of Negro sit-in demonstrations in five Birmingham eating places. He heads the Alabama Christian Movement for Human Rights.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 93

ALABAMA JOURNAL APRIL 27, 1960

TIMES WILL PROBE ACCURACY OF STORIES

NEW YORK (AP)—The New York Times says it will publish "an appropriate correction" if incorrect or inaccurate statements were made in stories published by the newspaper relating to Birmingham, Ala.

The newspaper earlier this month published two stories by Harrison E. Salisbury concerning Birmingham's racial troubles.

The Times statement, issued by Managing Editor Turner Catledge, was published in reply to letters from Birmingham City Commissioners.

The Times also published the text of the letters from Mayor James W. Morgan, Commissioner of Public Safety Eugene Connor and J. T. Waggoner, commissioner of public improvements.

They complained that The Times stories, published April 12 and April 13, inferred that the commissioners had encouraged or condoned racial hatred or religious intolerance.

WOULD FILE SUITS

The commissioners had said they would file suits if no retraction or correction is published by The Times.

The Times statement said:

"The stories, from Birmingham were prepared by a reliable and experienced reporter. They were based on interviews with residents of Birmingham and in addition brought together material which had previously been re-
[fol. 1591] ported in the Birmingham press and elsewhere.

"The Times' standards require the reporting of the news in its fullest and most balanced form. In keeping with these standards, the demand for retraction is being published so that our readers may know the elements of the Salisbury articles which the Birmingham Commissioners feel are unfair."

The statement said William T. Engel, chairman of the Birmingham Committee of One Hundred has been invited to prepare a statement of its point of view, which The Times will published when it is received.

The Committee of One Hundred is composed of leading Birmingham businessmen and is organized to attract new industry to Birmingham.

The statement continued:

"The two articles about Birmingham constituted a story of the tension that our reporter concluded exists there. We recognize that the articles did not stress the obvious fact that an overwhelming percentage of the citizens of that city lead happy and peaceful lives in a growing and prosperous community.

"Nor did the articles stress the equally obvious fact that this substantial element of the citizenry deplores any lawlessness that may exist in their city and is working in its own way to correct and reduce such tensions as exist."

"Should further investigations by The Times indicate that any statement in the Salisbury articles is incorrect or inaccurate in any respect, The Times will publish an appropriate correction."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 94

Alabama Journal May 7, 1960

THE TIMES AND SALISBURY

A statement by the managing editor of The New York [fol. 1592] Times defends the outrageously distorted and untrue story about Birmingham written by Harrison E. Salisbury because "Mr. Salisbury is an experienced reporter and once won a Pulitzer prize."

Those two facts do not make an honest reporter and Salisbury has proved that.

Salisbury is an old offender in so far as biased and distorted reporting is concerned. In the current National Review, Eugene Lyons takes the hide off of Salisbury for his past record of inaccuracy in his Moscow reporting, and for the statements made in Salisbury's new book "To Moscow—And Beyond." Salisbury spent six years in Russia, and then went back again for six months to write his book. He takes a new look, according to Lyons, boldly saying "Krushchev liberalism" seems to him a sufficient foundation for a 180-degree turn in Western policy, looking at an eventual American alliance with Communist Russia—against Communist China. Salisbury says "Krushchev is preparing his people for that golden era in relations with the Western world for which they had so long yearned." As for Salisbury's on-the-spot reporting about Russia, Eugene Lyons writes:

"The truth is that this rationale or 'playing ball with Khrushchev' has in recent years been common forensic currency among those eager to stake all on the rhetoric of peaceful co-existence.' And that is what makes the new Salisbury book potentially mischievous. It provides a manual for piecemeal surrender to Moscow. Salisbury bids fair to become for the 1960's what his long ago predecessor in the Soviet post Walter Duranty, was for the 1930's: the authority for self-delusion rooted in half-truth and wishful thinking. . . .

"Yet by 1954 when he wound up a stint of nearly six years in Moscow, he was widely regarded as a fellow traveler. Time could write that 'his reports often read more like Red propaganda than accounts of what was really going on inside Russia.' At regular intervals, for example, he had assured the Times customers that the entire population was 100 per cent behind Stalin's domestic and foreign policies."

When a man writes like that of today's and yesterday's Soviet dictators after spending so much time with them, [fol. 1593] why should it cause any surprise that a reporter of his temperament should write such an untrue, biased and distorted story about Birmingham after spending 48 hours in the Alabama city?

The New York Times seems unfortunate in its choice of foreign correspondents. One of them boosted Castro to the skies and refused to change his opinion evern after Castro had shown himself a genuine heel. Now, Salisbury is unable to write the true facts about Khrushchev in his newspapers.

So, a man may win a Pulitzer prize and be an experienced newspaperman and reporter and "still be a villan."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 95

ALABAMA JOURNAL MAY 6, 1960

B'HAM. OFFICIALS FILE TIMES SUITS OF $500,000 EACH

BIRMINGHAM (AP)—Birmingham's three city commissioners today filed suits as individuals against The New York Times, claiming $500,000 damages each in a recent story in The Times about Birmingham's racial situation.

The suits were filed by Mayor James W. Morgan, Police Commissioner Eugene (Bull) Connor and Public Service Commissioner J. T. Waggoner.

The complaints named The New York Times Co. and Harrison E. Salisbury, a member of The Times' staff.

All three complaints charged that The Times printed a story April 12 "with intent to defame" the commissioners "falsely and maliciously."

[fol. 1594]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 96

ALABAMA JOURNAL MAY 12, 1960

GOVERNOR PREPARES SUIT AGAINST N. Y. TIMES

Governor John Patterson said Wednesday he had asked The New York Times to retract statements in an advertisement which solicited funds for the legal defense of Negro leader, Martin Luther King, Jr.

The governor also said a suit of "about one million dollars" was being prepared against the Times. The request for a retraction is the first step in filing a libel suit in Alabama.

The governor told a news conference the notice also had been filed with the Revs. Ralph Abernathy and Solomon S. Seay, Sr., both of Montgomery, Fred L. Shuttlesworth of Birmingham and J. E. Lowery of Mobile, all Negroes who were among the 60 signers of the advertisement.

The governor said he will file one million dollar suits against the four Alabama ministers.

The governor said the ad "has damaged my reputation, the reputation of every member of the State Board of Education and the reputation of this state."

The ad, signed by prominent liberals, asked for funds to help King defend himself against perjury charges in connection with this state income tax.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 97

ALABAMA JOURNAL MAY 13, 1960

ANOTHER TIMES ACT

The New York Times has now joined the chorus of ADA, ultra-liberals and anti-McCarthyists and that ilk in demanding Un-American Activities dissolution of the Un-American Activities Committee. The Times is doing some things [fol. 1595] these days that are most surprising to its old time friends.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 98

ALABAMA JOURNAL MAY 16, 1960

N. Y. TIMES RETRACTS PARTS OF STATEMENT

Acting on protest by the governor of Alabama, The New York Times today retracted part of a recently published paid advertisement of "the Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

In a letter sent May 9, Governor Patterson demanded a retraction on grounds that the advertisement accused him of "grave misconduct and of improper actions and omissions" as governor and ex-officio chairman of the State Board of Education.

The advertisement, carried in The Times, March 29, bore the names of a number of entertainers, writers, clergymen and others prominent in public life.

PAPER VIEW NOT STATED

In its statement The Times said the ad was received in the normal course of business and does not reflect the paper's editorial judgment or opinion.

"Since publication of the advertisement, The Times made an investigation and consistent with its policy of retracting

and correcting any errors or misstatements which may appear in its columns, herewith retracts the two paragraphs complained of by the governor."

Stating that it never intended to suggest any charge by publication of the ad, "The Times said:

"To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times apologizes to the Hon. John Patterson therefor."

[fol. 1596]

RETRACTED PARAGRAPHS

The two retracted paragraphs are:

"IN Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding', 'loitering,' and similar 'offenses. And now they have charged him with 'perjury' —a felony under which they could imprison him for 10 years."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 99

Alabama Journal — May 17, 1960

BIRMINGHAM (AP)—Gov. Patterson says he will talk with state attorneys before deciding what effect a retraction may have on his plans to sue The New York Times.

"The retraction proves that they knew the allegations in the ad were untrue," was Patterson's only comment on the action Monday.

The Times Monday retracted a portion of a paid advertisement it recently published for "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

Patterson contended the advertisement accused him of "grave misconduct and of improper actions and omissions" as governor and ex-officio chairman of the State Board of Education. He demanded the retraction in a letter May 9.

The Times said it made an investigation, and added: [fol. 1597] "To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times herewith apologizes to the Hon. John Patterson therefor."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 100

ALABAMA JOURNAL MAY 20, 1960

TIMES CHALLENGES LIBEL SUIT HERE
NEW YORK NEWSPAPER RETAINS B'HAM FIRM OF BEDDOW, EMBRY, BEDDOW AS COUNSEL

The New York Times moved today to quash a suit by which city commissioners of Montgomery seek a half-million dollars for alleged libel.

Filing of the motion in Circuit Court revealed that the Birmingham law firm of Beddow, Embry and Beddow had been retained as counsel for the newspaper. The senior member, Roderick Beddow, is a noted Alabama criminal lawyer.

Montgomery's three city commissioners claim they were defamed in an advertisement which solicited money to defend the Rev. Martin Luther King, Negro leader, who is charged with perjury in connection with his state income tax return.

OTHER DEFENDANTS

Also named as defendants in the suit were Revs. Ralph Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery.

Through its counsel, The Times said the Circuit Court lacks jurisdiction of the newspaper or the subject matter of the action because:

It is a foreign corporation and is not qualified, licensed or otherwise authorized to do business in Alabama;

The newspaper does not have an agent for service of process on it in Alabama (one copy of the summons and complaint was served on Don McKee as its agent);

[fol. 1598]

HASN'T WAIVED SERVICE

The Times has not waived service of due process by voluntary appearance or otherwise.

The cause of action alleged in the complaint did not accrue from the doing of any business or the performing of any work or service or as an incident thereto by The Times or its agent, servant or employee in the state.

The sheriff's return of the purported services of process on Don McKee shows that McKee was served as agent of The New York Times and not as an agent of the defendant. (The New York Times Company). McKee is the Times' correspondent in Montgomery.

The city commissioners, Mayor Earl James and Commissioners Frank Parks and L. B. Sullivan, charged in the suit that the ad's version of incidents surrounding recent demonstrations by Montgomery Negro college students subjected them to ridicule and embarrassment.

CLAIMS AD UNTRUE

It is contended the advertisement contained untrue material and that The Times refused their demand for retraction.

Exception was particularly taken to this portion of the ad:

"When the entire student body (of Alabama College) protested to state authorities by refusing to re-register, their dining room was padlocked in an attempt to starve them into submission."

This, it was alleged in the ad, followed expulsion of student demonstration leaders from the school.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 101

ALABAMA JOURNAL MAY 27, 1960

NEW YORK TIMES ASKS DISMISSAL OF LIBEL ACTIONS

BIRMINGHAM (UP)—The New York Times and reporter Harrison E. Salisbury Thursday asked federal court here to dismiss suits brought against them by the city [fol. 1599] commissioners asking $1,500,000 damages for libel.

In separate motions, The Times and Salisbury contend that the court lacked jurisdiction because the newspaper "has not done any business or performed any service . . . in Alabama."

Salisbury also claimed the court lacked jurisdiction "in person and subject matter."

The city commissioners filed suit because of two articles about Birmingham that appeared in the Times last April 12 and 13. They claimed the articles contained libelous statements.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 102

ALABAMA JOURNAL MAY 31, 1960

PATTERSON HAS TO READ THE TIMES

When members of the State Building Commission went into the office of Gov. Patterson for a meeting yesterday, several copies of The New York Times were stacked on a big table.

"Any of you all like to see a copy of The New York Times?" asked the governor. "I don't read the local papers any more; have to read The Times to see what's going on."

As he spoke the news wires were carrying stories about the governor's million dollar suit against The Times.

He claims the paper carried false and malicious statements about him.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 103

ALABAMA JOURNAL MAY 31, 1960

3 OFFICIALS OF BIRMINGHAM FILE TIMES SUIT

[fol. 1600] BIRMINGHAM (AP)—Three more city officials have filed libel suits against The New York Times because of a story about racial conditions in and around Birmingham.

Mayor Jess Lanier and two other members of the Bessemer City Commission filed individual suits for $500,000 in U. S. District Court last Friday.

Similar complaints were filed May 6 by Birmingham's three city commissioners. They also asked $500,000 each.

The suits grew out of a story in The Times entitled "Fear and Hatred Grip Birmingham." It mentioned conditions in neighboring Bessemer as well.

In their complaints, the Bessemer officials charged the story subjected them to "public contempt, ridicule, shame and disgrace." The suits were filed in the names of Mayor Lanier and Commissioners Raymond Parsons and Herman Thompson.

They said the New York newspaper failed to publish a "full and fair retraction."

Another libel suit was filed against The Times and five Negroes Monday by Gov. John Patterson, asking for one million dollars. Patterson's complaint, filed in state court at Montgomery, was based on a full-page advertisement soliciting funds for the legal defense of the Rev. Martin Luther King, Jr.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 104

ALABAMA JOURNAL MAY 30, 1960

PATTERSON FILES SUIT: CLAIMS LIBEL OF MILLION

Gov. John Patterson filed a million dollar libel suit in state court here today against The New York Times and five Negro leaders, including the Rev. Martin Luther King, Jr.

He charged The Times and the five Negroes with "false [fol. 1601] and defamatory matter" in an advertisement soliciting funds for the defense of King in his recent perjury trial.

The Negro minister, who was accused of falsifying his state income tax returns, was acquitted by an all-white jury here Saturday.

Patterson asked for a total of a million dollars from The Times. King, the Rev. J. E. Lowery of Mobile and Rev. F. L. Shuttlesworth of Birmingham and the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr., of Montgomery.

The full-page advertisement, which appeared in The New York Times paper March 29, bore the names of Lowery, Shuttlesworth, Abernathy and Seay.

King's name was not included, but the governor's office said he was included as a defendant in the libel action because the ad was run in his behalf.

Patterson filed the suit as governor and as ex-officio chairman of the State Board of Education. But in an accompanying prepared statement, he said he considered it also a complaint "in behalf of the people of Alabama."

He said any money received as a result of the suit would be donated to the state "for the construction of a modern, well-equipped nursing home for our needy old folks."

PART RETRACTED

The Times on May 16, retracted the two paragraphs of the ad which the governor mentioned in his court suit,

but Patterson said he did not consider it a full and fair retraction."

Patterson had demanded a retraction.

The Times said the paid advertisement was received in the normal course of business and did not reflect the paper's editorial judgment or opinion."

In saying it never intended to suggest any such charge by its publication, the paper said:

"To the extent that anyone can fairly conclude from the statements in the advertisement that any such charge was made, The New York Times hereby apologizes to the Hon. John Patterson therefor."

[fol. 1602] Patterson contended the advertisement imputed "improper conduct" to him and subjected him to "public contempt, ridicule and shame."

In his prepared statement, the governor also said "the good name of Alabama has been slandered."

Patterson demanded a jury trial in state Circuit Court.

Montgomery's three city commissioners—Mayor Earl James and L. B. Sullivan and Frank Parks—filed similar suits earlier against The Times, Lowery, Shuttlesworth, Abernathy and Seay.

The city officials asked $500,000 each.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 105

ALABAMA JOURNAL JUNE 30, 1960

TIMES TOLD TO SHOW RECORDS

A petition of The New York Times Co. seeking to have the State Supreme Court set aside an order to produce records was denied yesterday.

Circuit Judge Walter B. Jones had earlier ordered The Times to produce certain documents, copies of newspapers and copies of letters passing between the company and its Alabama correspondents so that the Court might determine

whether or not The New York Times newspaper is doing business in Alabama.

The controversy has arisen over the service of papers in a libel suit by Montgomery's city commissioners against The Times on the Alabama Secretary of State as provided by Alabama law.

As soon as the papers were served, The Times filed a motion to set aside the service on them, contending that they were not doing business in Alabama at the time an advertisement containing what the commissioners considered libelous statements appeared.

Commissioners L. B. Sullivan, Frank Parks and Earl [fol. 1603] James filed their suit in Circuit Court after The Times carried a full page advertisement on March 29, sponsored by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South.

The Montgomery city commissioners claimed in their suit that the matter of the advertisement was untruthful and libeled them.

Roderick McLeod, Birmingham attorney, contended before the Supreme Court that the papers and documents order by Judge Jones were not necessary and that Jones' order should be set aside.

The city commissioners were represented by the Montgomery law firm of Steiner, Crum and Baker and by Roland Nachman who maintained that it was necessary to have the papers before the Circuit Court in order for it to determine whether or not the newspaper was doing business in Alabama.

The motion of The Times to quash the service of the papers on it is set before Judge Jones for hearing on July 25.

Yesterday he gave the newspaper an extension of 10 days in which to produce the documents. This will expire July 6.

The merits of the case are expected to be tried during the October term of Circuit Court.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 106

ALABAMA JOURNAL JUNE 24, 1960

FLAGRANT ERRORS ABOUT SOUTH

The current edition of Time magazine has an article on "Alabama's Vanderbilt University." The New York Times of recent date published a map of the Gulf states which put Mississippi where Alabama is, and located Alabama and Birmingham along the Mississippi River.

It seems that educated men would know better than this, though it has long been observed that the South's severest critics in the North are men and publications absolutely ignorant about the subject they are discussing.

[fol. 1604] It is possible of course that critics of the South such as Time and The New York Times know better than to put Vanderbilt University in Alabama or to transpose Alabama and Mississippi on maps of the Deep South states. It is unthinkable that they would deliberately publish such errors in order to cause talk and get themselves advertised.

The only real explanation is abysmal ignorance about the South and the ignorance seems to permeate large publishers. Such great publications have reference files, librarians and supervisory personnel to catch errors and to help make their publications accurate in what they print by verification of various editors.

Perhaps we notice the Alabama errors because we are so interested in our state, but if errors are made with regard to Alabama they are certain to be made about others also.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 107

ALABAMA JOURNAL JUNE 2, 1960

ALABAMA! ALABAMA! WHEREFORE ART THOU?

For the second time in recent months, a major publication has misplaced Alabama and Mississippi.

The New York Times transposed Alabama and Mississippi in a map published Tuesday dealing with the Supreme Court's decision on offshore oil rights.

The magazine, Better Homes and Gardens, made an identical mistake several months ago. At the time, state publicity director Roy Marcato issued a statement denying that Montgomery was the capital of Mississippi.

The error might prove doubly embarrassing to The Times inasmuch as the newspaper is presently being sued by a host of Alabamaans for alleged inaccuracies.

[fol. 1605] One newspaper commented that perhaps Harrison Salisbury who wrote two articles in Birmingham which brought on several of the suits, was actually in Mississippi and only thought he was writing about Alabama.

Politicians were quick to get in on the act by protesting the error. Rep. George Huddleston and Gov. Patterson both issued statements.

Huddleston said in a statement Wednesday it was surprising that The Times should display such apparent ignorance of geography.

"The Times" once-fine reputation is fast wearing out and we can understand why if this is an example of how The Times gathers and reports the facts," Huddleston said.

There was no comment from The Times on Huddleston's statement.

Gov. John Patterson remarked that the newspaper seems to have misplaced Alabama since he and city officials of Montgomery, Birmingham and Bessemer filed libel suits because of a controversial advertisement and racial story it carried.

"I'm sure it's just an oversight," Patterson said, "but the Times has been paying so much attention to us lately I thought they would at least know about Alabama, especially its geographical position.

Because of a mechanical error, the lettering of the two states got transposed. The error was caught and a correct map appeared in all subsequent editions.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 108

ALABAMA JOURNAL JUNE 8, 1960

CITY FATHERS SEEKING BACK ISSUES OF TIMES

"If a newspaper systematically gathers news in a state, it is doing business in that state," Roland Nachman, attor- [fol. 1606] ney for the Montgomery City Commissioners, argued Tuesday in a hearing before Circuit Judge Walter B. Jones.

The hearing was held to determine whether The New York Times should be required to produce back issues of the paper in conjunction with the commissioners' libel suit against The Times.

Nachman, a member of the legal firm of Steiner, Crum and Baker, maintained the records were necessary to attorneys for the plaintiffs.

Eric Embry, representing the New York newspaper, called the request for documents a "fishing expedition."

He argued that attorneys for the City Commissioners could peruse copies of The Times at the local library and elsewhere. He maintained, also, that other requested documents were so vaguely described that the newspaper would not know what was required.

Embry specifically maintained that The Times was not doing business in Alabama by virtue of printing news stories emanating from this state.

The printing of news stories about, or relating, to a place does not constitute doing business in that place, Embry argued.

On the other hand, Nachman said his clients, "have the right to discovery."

He said daily issues of The Times for more than three years were needed to show whether or not the newspaper had systematically engaged in gathering news from Alabama.

Judge Jones promised a ruling in the matter in "two or three days."

The suit was filed against the Times by Montgomery's three city commissioners following an advertisement in the New York newspaper which solicited funds to aid in the court defense of perjury charges filed against integrationist leader Martin Luther King.

[fol. 1607]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT 109

ALABAMA JOURNAL JUNE 14, 1960

TIMES REQUESTS LIBEL DISMISSAL IN JEFFERSON

BIRMINGHAM (AP)—The New York Times Co. has filed a motion for dismissal of three libel suits brought by city commissioners of nearby Bessemer, Ala.

The motion, filed in U. S. District Court, contends that The Times does not do business in Alabama and is not subject to jurisdiction of a court in the state.

The suits filed in May by Mayor Jess Lanier and Commissioners Raymond Parson and Harman Thompson, seek $500,000 damages for a story in The Times describing racial problems in Birmingham and Bessemer.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 110

ALABAMA JOURNAL JUNE 16, 1960

KING AD NETTED ABOUT $7,000

NEW YORK (AP)—A full-page advertisement in the March 29 issue of The New York Times brought in about $7,000 for the defense of The Rev. Martin Luther King in his recent Alabama perjury trial, a spokesman for a King fund-raising group said Wednesday.

Gov. John Patterson of Alabama has filed a million-dollar libel suit against The Times and five Negro leaders, including the Rev. Mr. King. Three city commissioners of Montgomery also have filed similar suits.

The Times, on May 16, retracted the two paragraphs of the advertisement which the governor mentioned in his court suit. But Patterson said he did not consider it a "full and fair retraction."

The Negro minister was acquitted last month of the perjury charge, falsifying state income tax returns.

[fol. 1608] The advertisement was sponsored by the Committee to Defend Martin Luther King.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 111

ALABAMA JOURNAL JUNE 24, 1960

'TIME' PUT VANDY IN ALABAMA

Time Magazine today joined Better Homes and Gardens and the New York Times in the campaign to change Southern geography.

Time reports Vanderbilt University is in Alabama.

Several local Vanderbilt alumni promptly denied Vandy has been moved to Alabama. "It's still in Nashville, Tenn.," they chorused.

Someone surmised that Time was merely giving Alabama a university for one that it took away on a previous occasion.

Several years ago, Time reported the famed Negro college Tuskegee Institute, was located at Macon, Ga.

Time's error comes on the heels of two other embarrassing geographical mistakes in national publications. Better Homes and Gardens, in a map of the Southeast, misplaced Alabama and Mississippi.

Later, the New York Times made the same error and compounded the same by putting Birmingham squarely in the middle of Mississippi.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 112

ALABAMA JOURNAL JUNE 1, 1960

JUSTICE IN ALABAMA

[fol. 1609] Now that The New York Times has learned from the King case that Montgomery County juries are so just and fair the paper will probably give some special attention to the damage suits of Gov. Patterson, and the city commissioners of Montgomery and Birmingham. If our juries do justice to one defendant they are likely to give The Times a taste of justice also, and justice is what The Times will want to avoid in the Alabama cases.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 113

ALABAMA JOURNAL JULY 20, 1960

BIRMINGHAM OFFICER SUES N. Y. TIMES

BIRMINGHAM (AP)—A Birmingham detective has filed a $100,000 suit against The New York Times and one of its reporters.

The suit filed here Tuesday, names the Times and reporter Harrison E. Salisbury. The detective, Joe Lindsey, said the Times "thoughtfully and maliciously" published the article concerning him.

The suit is based on part of a series published last April under Salisbury's name. The stories dealt with race relations in the Birmingham area.

Similar suits have been filed by members of the city commissions of Birmingham and neighboring Bessemer.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 114

ALABAMA JOURNAL JULY 25, 1960

STATE HAS NO JURISDICTION IN LIBEL SUIT, 'TIMES' SAYS

The New York Times contended that it is not an Alabama firm and therefore can't be sued in the state courts. [fol. 1610] The question of whether the New York newspaper "does business" in Alabama was placed before Judge Walter B. Jones here today in one of the first court actions arising out of several libel suits filed by Alabama citizens, against the Times.

The hearing which began today came on The Times' motion to quash service of a half-million dollar damage suit filed by Montgomery's three city commissioners who claimed they were libeled by The New York Times newspaper.

The Times, represented by the Birmingham law firm of Beddow, Embry and Beddow, has moved to quash service of the process on grounds that subjecting it to the jurisdiction of the state court would violate provisions of the 14th amendment of the U. S. Constitution.

The Times also contends that state jurisdiction of the suit would "place an undue burden upon interstate commerce."

Only one witness testified during the morning and that was Harold Faber, day national news editor of the Times.

Faber was questioned concerning his communications with Times "stringer" correspondents in Alabama.

The hearing was expected to last several days.

The suit grew out of an advertisement published seeking funds for the defense of the Rev. Martin Luther King who was charged and later acquitted of perjury in connection with the filing of his state income tax.

Several prominent Negro leaders were also named defendants in the suit which was filed on an individual basis by the city's three commissioners, L. B. Sullivan, Earl James and Frank Parks.

Outcome of today's hearing will doubtless have an effect on other suits pending against the trial. Gov. Patterson had filed a $1 million suit against The Times, claiming he was also defamed by the advertisement.

A number of officials in Birmingham and Bessemer are likewise suing, but not about the advertisement. Their suit claims a series of articles on the racial situation in Birmingham libeled certain officials.

[fol. 1611]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT NO. 115

ALABAMA JOURNAL JULY 26, 1960

200 TIMES STORIES ABOUT ALABAMA PUT INTO EVIDENCE IN COURT

BY Judith Rushin Journal Staff Writer

Attorneys for Montgomery city officials, in an attempt to prove The New York Times is doing business in Alabama continued this morning in Circuit Court to introduce Times articles written in the state.

Over 200 such exhibits have been introduced thus far in the hearing which began yesterday before Judge Walter B. Jones.

The controversy began when The Times filed a motion to quash service of a half-million dollar libel suit brought

by Montgomery's three city commissioners, claiming they could not be sued here because they were not doing business in Alabama.

STORIES PASSED IN EVIDENCE

Judge Jones this morning allowed Atty. Roland Nachman, representing the plaintiff's to submit copies of stories sent to the Times from wire services operating in Alabama.

Nachman told the court he was introducing them under the theory of a recent U. S. Supreme Court case which held that obtaining services from an independent contractor in a state constituted doing business in that state.

Times attorneys strongly objected, saying they considered Judge Jones' ruling the ultimate in stretching the construction of the case.

Nachman commented that by the introduction of these exhibits he was trying to show a pattern of consistent news gathering by the New York newspaper in Alabama.

He also attempted to place into evidence copies of Times society page items sent to it from Alabama but laughingly withdrew them when the opposing counsel objected that these did not indicate the doing of business here.

Harold Faber, day national news editor for the Times [fol. 1612] who was the first witness to testify yesterday, remained on the stand today to verify the fact that articles introduced by Nachman were written by staff members or "stringer" correspondents in Alabama.

14TH AMENDMENT CITED

In representing The Times, the Birmingham law firm of Beddow, Embry and Beddow based their motion to quash service on the grounds that subjecting the Times to the jurisdiction of the state court would violate provisions of the 14th Amendment of the U. S. Constitution.

They also contend that state jurisdiction of the suit would "place an undue burden on inter-state commerce."

The suit by the commissioners grew out of an advertisement published in The Times seeking funds for the defense of Negro leader Martin Luther King, who was acquitted of perjury in connection with State income tax returns.

Three members of the New York firm of Lord, Day and Lord are in Montgomery for the trial. This firm includes former U. S. Atty. Gen. Herbert Brownell.

When reporters asked Louis M. Loeb, a member of the firm, if Brownell might come to Montgomery in connection with the Times case, he replied absolutely not.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 116

ALABAMA JOURNAL JULY 27, 1960

'TIMES' HEARING ON LIBEL SUIT IN THIRD DAY

A hearing on a motion to throw out three $500,000 libel suits against The New York Times went into its third day today.

The damage suits were filed by Montgomery's three city commissioners as a result of a full-page advertisement in The Times last spring seeking legal aid funds for the Rev. Martin Luther King, Jr.

The city officials contend the ad which was critical of [fol. 1613] the handling of anti-segregation protests by Negro students reflected on them as individuals and public officials.

OTHER SUIT FILED

Gov. John Patterson also filed a million-dollar libel suit against The Times and four Alabama Negro Integration leaders because of the advertisement.

Circuit Judge Walter B. Jones allowed Atty. Roland Nachman, who represents the commissioners, to submit copies of wire service stories from Alabama published by the Times.

Nachman said he offered the news dispatches under a U.S. Supreme Court decision which, he said, held that obtaining news from an independent contractor constitutes doing business in a state.

NO JURISDICTION

Therefore, they contend, the state courts have no jurisdiction.

Attorneys for the city officials have sought to show a "continuous course of conduct" on the part of The Times in news gathering and advertising soliciting in Alabama.

Nachman attempted to show that "string" correspondents have acted as agents for The Times in Alabama and for this reason the newspaper's day national news editor has been getting news and the newspaper has been operating in Alabama.

QUIZ STAFFERS

Joseph Wagner, national advertising manager of The Times and Harold Faber, the newspaper's day national news editor, were questioned at length Tuesday.

Times advertising solicitors have visited in Alabama this year, Wagner testified, but they don't live in the state and the newspaper doesn't own an office or any real estate in Alabama.

Wagner said out of 60 million lines of advertising carried in the Times last year, only 5,471 lines were from Alabama advertisers.

[fol. 1614]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 117

ALABAMA JOURNAL JULY 28, 1960

IMPORTANT PRECEDENT AT STAKE IN 'TIMES' CASE BEFORE JONES

BY Ray Jenkins Journal City Editor

To the casual observer, the proceeding involving The New York Times in Circuit Court this week is just a torrent of dull and dry legalisms. But to newspapers, and to many other businesses as well, Judge Jones' decision will be profoundly significant.

The questions which Judge Jones must decide: Can a newspaper be sued for libel in any state where it circulates, or can it be sued only in its home state?

For three days now, attorneys for Montgomery city commissioners who are suing The Times for $500,000 each, have sought to prove that The Times is "doing business" in Alabama. They contend if The Times gathers news, solicits advertising, and sells papers in Alabama, the newspaper is obviously "in business" in this state and is therefore subject to Alabama laws and courts.

AP OPERATION RAISED

Among other things, the commissioners maintain that the Associated Press is technically an extension of The New York Times which operates full time in Alabama. The AP, the nation's largest newsgathering agency, is a nonprofit, cooperative organization owned by newspapers subscribing to its service. Newspapers served by this news service are not "customers," but "members" of the Associated Press.

Should Judge Jones hold that membership in the AP constitutes "doing business" in a state, and should his decision be upheld, it could mean every major newspaper in the country would be subject to suit in any of the 50 states, since the AP functions in all of them. It also would mean that such suits would be tried before local juries disposed to give favorable verdicts and big judgments to native sons over "foreign" newspaper corporations.

A decision against The Times would place no undue bur- [fol. 1615] den on such newspapers as The Advertiser-Journal which circulate primarily in only one state. The newspapers which would feel the effect most severely would be a dozen or so metropolitan dailies which have general circulation throughout the nation, such as The Times.

OTHERS ALSO AFFECTED

Affected to a lesser extent would be newspapers which happen to be located on state boundaries, like the Mobile Press-Register, which has a substantial circulation in Mis-

sissippi, and the Columbus (Ga.) Ledger-Enquirer, which has many subscribers in Alabama.

In previous cases the courts have held that newspapers must be sued in the state where they are published, not in states where they circulate. Louis M. Loeb, general counsel of the New York Times who is here for first-round action this week, recalls three similar cases brought against The Times, two filed in the District of Columbia and one in England. In all three cases, the courts held the suits must be filed in either state or federal court in New York and in all three cases, the suits were promptly dropped.

But those decisions all came more than 12 years ago, and the U. S. Supreme Court has changed a great deal in the meantime. The present court has many times reversed previous positions.

STRAW IN WIND

Moreover, there are straws in the wind to indicate the court may well rule against The Times. Only this year, the Supreme Court held Scripto, the pencil company with headquarters in Georgia, "does business" in Florida by selling its pens and pencils and must therefore pay certain Florida taxes. The court ruled that even though the Scripto products were sold through independent contractors, the company still did business in Florida. Newsstands in Alabama could well be considered independent contractors for The New York Times.

On the other hand, Judge Jones himself recently made a decision which could have some bearing on the present issue. That decision involved a libel suit brought by a Montgomery woman against Random House, the New York publishing house. Judge Jones held that sale of books through independent agents does not constitute "doing business" [fol. 1616] in the state.

Attorneys for the commissioners (who, oddly enough, were defending Random House in the previous case) contend the cases are entirely different. While Random House only sold books on a wholesale basis, The Times has been much more actively engaged in business in Alabama through its news gathering advertising, and sales activities.

COURSE OF APPEAL

Should Judge Jones rule the case is in his jurisdiction, the Times could appeal directly to the State Supreme Court. And if the Supreme Court should uphold Jones, the trial itself would proceed before Jones. If the trial proceeded and resulted in an unfavorable decision to the Times, then that decision should be appealed to the State Supreme Court and from there to the U. S. Supreme Court where the question of jurisdiction would be considered along with other objections.

Should the Times win the point of jurisdiction, the only recourse of the city commissioners would be to file the suit in New York state courts or New York Federal Court.

The groundwork being laid in the present case, of course, will apply to libel suits pending against The Times by Gov. John Patterson and several Birmingham officials.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 118

ALABAMA JOURNAL AUG. 1, 1960

JONES HEARS ARGUMENTS IN N. Y. TIMES SUIT

Opposing attorney's argued for two hours before Judge Walter B. Jones today on the question of whether The New York Times is doing business in Alabama and is subject to suit in state courts.

Judge Jones must decide whether his court has jurisdiction before trial can proceed in a libel suit brought against The Times by Montgomery's three city commissioners.

[fol. 1617] The city fathers are each asking $500,000 for alleged damage to their reputations resulting from an ad published in The Times seeking funds to defend the Rev. Martin Luther King when he was charged with perjury. The commissioners contend the advertisement implied the city has not given King equal protection of the law.

"SYSTEMATIC" BUSINESS

Roland Nachman, representing the commissioners, argued the evidence shows The Times does business in Alabama on a "regular sustained, and systematic basis." The newspaper he continued gathers news, solicits advertising and sells papers in the state. "All the essential elements of publishing except the printing are done right here in Alabama," he asserted.

Attorneys from the Birmingham firm of Beddow, Embry and Beddow, representing the Times maintain the newspaper's entire business operation takes place in New York state, so only the state court of New York have jurisdiction.

Rod MacLeod, one of the attorneys for The Times, cautioned that a ruling against The Times would place an undue burden upon newspapers throughout the country especially those with national circulation. They would be subject to harassing suits in any of the 50 states, he said.

N. Y. LAWYER HERE

Also arguing for The Times was Ron Diana, of the New York firm of Lord, Day, and Lord.

Judge Jones' ruling is expected within two weeks. If he rules he has jurisdiction, and that ruling is upheld by the state Supreme Court, the case will be ready for trial before Judge Jones.

Mayor Earl James, one of the three who brought the suit, was in court this morning listening to the closing arguments.

[fol. 1618]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 119

ALABAMA JOURNAL JULY 27, 1960

TEMPERS FLARE AT 'TIMES' HEARING PRE-TRIAL ACTION ENTERS 3rd DAY IN CIRCUIT COURT

By Judith Rushin Journal Staff Writer

Tempers flared this morning in Circuit Court as the hearing on a motion by The New York Times to have a libel suit by Montgomery's city commissioners thrown out of the state court entered its third day.

A verbal free-for-all started when a Times attorney challenged the interpretation by Montgomery Atty. Roland Nachman of a U. S. Supreme Court case concerned with a foreign corporation doing business within a state.

As attorneys on both sides of the controversy jumped up to defend their positions, New York attorney Ronald S. Diana stalked out of the courtroom saying he would secure his proof from the law library on the fourth floor.

TEMPERS COOL

In the meantime, however, Judge Walter B. Jones instructed Montgomery attorney Sam Rice Baker to continue his cross-examination of Times national circulation manager Roger Waters, and when Diana returned hostilities had ceased and the case continued.

Baker attempted to prove by Waters' testimony that baggage agents who handled paper work on claims from Alabama news dealers when issues of The Times were late or incomplete were agents of The New York newspaper, thus The Times were doing business in the state.

Times attorneys repeatedly objected to the introduction of this evidence but were overruled by Judge Jones.

As this morning's session drew to a close, Times lawyers placed on the stand the administrative assistant to The Times comptroller, John McCabe.

NO OFFICE HERE

McCabe testified that no person in Alabama was on the [fol. 1619] regular payroll in Alabama of The New York Times nor did any employe have an office in Alabama.

In attempting to refute Nachman's contention that "stringer" correspondents were agents of the newspaper so as to make the Times libel to suit in Alabama, McCabe was questioned particularly as to the payment of salary to the stringer.

He replied that these correspondents were not carried on the regular payroll but were paid according to stories published.

300 STORIES IN EVIDENCE

Attorneys for the city commissioners have introduced some 300 Times articles during the three-day hearing to support their allegation that The New York paper is doing business in Alabama.

The litigation has grown out of a million and a half dollar libel suit by the commissioners based on an advertisement seeking funds for the defense of Negro leader Martin Luther King, Jr. in his trial for perjury regarding state income tax returns.

King was acquitted in the Circuit Court here.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 120

ALABAMA JOURNAL AUG 6, 1960

N. Y. TIMES CAN BE SUED BY ALABAMA

By Ray Jenkins Journal City Editor

Judge Walter B. Jones has ruled The New York Times can be sued for libel in Alabama courts.

"The court finds an extensive and continuous course of Alabama business activities," said Jones, "News gathering, solicitation of advertising, circulation of newspapers and

other products. These systematic business dealings in Alabama give the Times substantial contacts with the State of Alabama, considerably in excess of the minimal contracts required by the Supreme Court decisions. The Times does business in Alabama."

[fol. 1620] Moreover, Jones continued, if the reputations of Montgomery's three city commissioners were damaged as they claim in their $500,000 suits against The Times, then the damage was done right here in Montgomery, not in New York. He said, freedom of the press does not command injured parties "to carry his witnesses, his evidence, his counsel, and himself more than 1,000 miles to a distant forum to bring his action for alleged damages to his reputation and to try his case."

CITES DECISIONS

To back up his contention that The Times does business in Alabama, Jones cited a string of court decisions which have held that very little contact is necessary to constitute doing business in a state. In one case, Jones wrote in his opinion, the Supreme Court ruled the delivery of a single insurance policy by mail was sufficient to constitute doing business in the State of California.

The veteran Montgomery jurist also dwelt at length on the facts in the case.

"To gather news for The Times, 11 admittedly regular staff correspondents have spent 153 days in Alabama," he said. "The results of their efforts are revealed in part by the 59 staff stories in evidence which contain the by-lines of these correspondents."

MAINTAINS "STRINGER"

Besides the regular correspondents, he continued, the Times maintains three "string" correspondents who serve The Times on a part-time basis. One of these, State Editor Don McKee of the Advertiser, was served with a copy of the suit.

Turning to the advertising, Jones said The Times actively solicits business in Alabama. He cited one advertisement sold to the State of Alabama which cost between $3,000 and

$5,000. And in 1958, a section on Alabama and a Sunday edition was published at a cost of $26,000.

Concerning the sale of papers, Jones said The Times has a daily circulation of 390 in Alabama and a Sunday circulation of 2,500.

TOTAL REVEUNE

Total revenue from both advertising and sale of papers [fol. 1621] in the state runs above $85,000 a year.

Jones seemed to indicate his ruling will not have universal application. He did not say that circulation alone means "doing business" in a state. Nor did he hold that membership in the Associated Press, a cooperative news gathering service which is owned by its customers, constitutes doing business in a state. Had he ruled that membership in the AP was sufficient to constitute doing business, the ruling would have meant that any major newspaper could be sued in any state.

The judge also touched on several legal technicalities in his 10-page ruling. He brushed aside The Times' contention that the suit had not been properly served on agents of The Times.

He also held that when The Times entered Court, it submitted to the jurisdiction of the court. "This defendant cannot assert that it is not properly before this court, and in the same breath argue that if it is, this court has no jurisdiction on the subject matter of the action."

Jones concluded that the traditional concepts of fair play and justice are on the side of the city commissioners. "The Circuit Court of Montgomery County is the appropriate and convenient forum to try this action," he declared.

Just what the next step will be in The Times suit is not entirely clear. It is uncertain whether Jones' ruling in the jurisdiction matter can now be appealed directly to the State Supreme Court, or whether the trial itself must proceed with the appeal on jurisdiction to go up along with any appeal growing out of the merits of the case.

In either case, the question of jurisdiction is not appealable to the federal courts until the case is tried here.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 121

ALABAMA JOURNAL AUG. 25, 1960

'TIMES' WRITER CALLED TESTIFY AT BESSEMER

[fol. 1622] BESSEMER, ALA. (AP)—Deputy Circuit Solicitor Howard Sullinger said today he has asked Harrison Salisbury of The New York Times to testify before a Grand Jury here next week.

Articles published in The Times under Salisbury's byline last April were critical of race relations in the Birmingham area.

"If conditions as described in The Times articles are found actually to exist, our Grand Jury will do all it can to remedy those conditions," Sullinger said.

"If they don't exist," Sullinger said, "our county and city officials and every law enforcement agency in the county have been libeled and slandered. If this is libel and slander someone should be required to answer for it."

Several suits there have been filed against The Times in connection with the articles, including three by Birmingham city Commissioners acting as individuals.

Sullinger added that the Grand Jury planned to examine contacts made by Salisbury in Birmingham in gathering material for his articles.

Sullinger said he mailed letters Wednesday to Salisbury and to Turner Carledge, managing editor of The Times, asking that Salisbury appear.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 122

ALABAMA JOURNAL AUGUST 8, 1960

WHERE THE DAMAGE IS DONE

The decision of Judge Walter B. Jones that The New York Times is subject to Alabama laws because the news-

paper "does business" in the state may have very wide repercussions if sustained. It might affect most of the great newspapers and magazines of the nation and make it necessary to defend themselves in charges of libel in the [fol. 1623] state where they do business.

There was a time in Alabama when libel suits could be brought against newspapers in any county of the state where they did business. A famous case was one brought in Blount County by Congressman Huddleston of Birmingham against the Birmingham Age-Herald. The suit was brought in another county on the plea that the paper had a few subscribers in Blount County. A rural jury stuck the newspaper with a $30,000 damage judgment.

This has since been changed and suits against a newspaper must be brought in the county where its plant and headquarters are located.

In the case of The New York Times there appears little doubt that Alabama citizens were libeled by the biased integration stories and advertisements which, the paper published. Judge Jones' decision means that the newspaper must defend itself, not at its own headquarters but where the damage, if any, was done. There is possibility that this would mean newspapers and magazines of national circulation may be sued and must answer for their action in any state of the union where they "do business."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 123

TIMES ASKS DISMISSAL OF B'HAM SUITS

BIRMINGHAM (AP)—Attorneys for The New York Times today asked U. S. District Judge H. H. Grooms to dismiss seven separate libel suits pending against the newspaper.

The suits ask a total of $3,100,000 damages.

The suits followed publication of an article in The Times last April dealing with race relations in Birmingham. The articles carried the byline of Harrison Salisbury, who was named a co-defendant in the suits.

Suits seeking $500,000 damages each were filed by Birm-
[fol. 1624] ingham City Commissioners James W. Morgan, Eugene Connor and James T. Waggoner, and Bessemer City Commissioners Jess Lanier, Raymond Parson and Herman Thompson.

Joe Lindsay, a Birmingham city detective, filed suit asking $100,000.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 124

ALABAMA JOURNAL SEPT. 5, 1960

SOME IS UNFIT

New York Times boasts of printing all the news that's fit to print.

From the number of libel suits the paper is now defending in Alabama it seems that the paper also prints some news that is unfit to print, especially about Alabama.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 125

ALABAMA JOURNAL SEP. 3, 1960

ROWDY SOUTH

People of the South have to read Time's political news with fingers crossed. The reason: Here are two examples in adjoining columns of its article on "The South" this week:

Regarding the Nixon visit to the deep South it says that the Nixons received an "even rowdier" welcome in Atlanta than in Birmingham and that in Atlanta the Nixon's "were pulled and pawed" by "enthusiastic Atlantans."

Regarding the religious issue in Louisiana we read: [fol. 1625] "Snarled Louisiana's arch-segregationist Leander H. Perez" etc.

Any newspaper man knows that that kind of biased reporting of news is punk, dishonest and unreliable. But it is the normal method of Time in writing about the South.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 126

ALABAMA JOURNAL Sept. 2, 1960

U. S. COURT RULES TIMES SUITS CAN BE TRIED IN STATE COURTS

BIRMINGHAM (UP)—Federal Judge H. H. Grooms ruled today seven libel suits totaling $3.1 million could be tried in Alabama against the New York Times.

The Times had claimed libel suits could not be brought in the state against the newspaper by Birmingham and Bessemer Commissioners because the newspaper did not do business in the state. However, Grooms ruled the newspaper did operate in Alabama when it sent a reporter into the state who "performed work or service for the New York Times" to be published in the newspaper and who acted for The Times.

Newspaper attorneys contended the Times "had no planned, regular or systematic news service" in Alabama and "no employees, offices, telephones, bank accounts or real property in the state."

They filed the motion for dismissal of libel suits brought by the commissioners and Birmingham Detective Joe Lindsay. Each commissioner is asking for $500,000 in damages and Lindsay is seeking $100,000.

The suits were filed in connection with a story entitled, "Fear and Hatred Grip Birmingham," written by Harrison Salisbury and published in the Times.

In Montgomery, Federal Judge Frank M. Johnson, Jr. has ruled The Times could be sued in Alabama. His decision resulted from libel suits filed against the paper by Gov. [fol. 1626] Patterson and Montgomery city commissioners.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 127

ALABAMA JOURNAL SEPT. 3, 1960

STATE CAN TRY N. Y. TIMES SUITS

BIRMINGHAM (AP)—Libel suits totaling $3,100,000 against The New York Times will be tried here following a federal court ruling Friday.

U. S. District Judge H. H. Grooms upheld the service of the suits which grew out of articles published in The Times last April.

An attorney for The Times said no appeal is planned at this time.

The stories—under the byline of Harrison Salisbury—dealt with race relations in the Birmingham area. Salisbury is a co-defendant in the suits.

COULD BE SERVED

Grooms said The Times could be served with suits in Alabama in this case because the stories that led to the suits were a result of "work or service in the State of Alabama by Mrs. Salisbury as an employe of The New York Times Co."

After seeking $500,000 each the suits were filed by Birmingham City Commissioners James W. Morgan, Eugene Connor and James T. Waggoner, and Bessemer City Commissioners Jess Lanier, Raymond Parson and Herman Thompson. Joe Lindsay, a Birmingham city detective, filed suit asking $100,000.

The suits were served on The Times, contending it is an out-of-state corporation doing business in Alabama, and on two part time correspondents in The Times in Alabama, contending they were agents of The Times.

Grooms dismissed the service of the suits on the two part [fol. 1627] time correspondents. He said neither was an agent of The Times.

During the two-day hearing attorneys for The Times argued that the newspaper does not do business in Alabama and therefore could not be served with a suit.

They also contended that the cause of action did not occur in Alabama. They said the cause of action was publication of the articles in New York, not Salisbury's gathering of information in Alabama.

CORRECTION

A story in Friday's Journal by United Press International referring to a ruling in local suits against The New York Times was in error. The dispatch stated that "Federal Judge Frank M. Johnson, Jr. has ruled The Times could be sued in Alabama. His decision resulted from libel suits filed against the paper by Gov. Patterson and the Montgomery city commissioners." The ruling referred to was made by Judge Walter B. Jones in one of three separate cases filed by Montgomery city commissioners.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 128

ALABAMA JOURNAL SEPT. 2, 1960

CLERIC DECIDES TO TESTIFY ON RACE RELATIONS

BESSEMER, ALA. (AP)—The Rev. Robert E. Hughes, executive director of the Alabama Council on Human Relations, today agreed to answer Grand Jury questions about reports of racial incidents in the area.

[fol. 1628] He made his decision while contempt proceedings were being launched against him.

When first called, the Rev. Mr. Hughes appeared before the Grand Jury about 15 minutes.

The officials came out and said they were instituting contempt action against him at the request of the Grand Jury.

Midway through the contempt proceedings, the Rev. Mr. Hughes' attorney said he would answer questions.

The contempt proceedings were halted.

Earlier, the Rev. Mr. Hughes was subpoenaed and ordered to bring the financial records of his organization before the Grand Jury.

Appeals to Circuit Court and the Alabama Supreme Court seeking to have the petition set aside were denied.

He contends the records of his organization have no bearing on the case.

The Grand Jury reportedly is investigating incidents of racial conflict in the area as reported in The New York Times last spring.

The contempt proceeding was instituted by Deputy Circuit Solicitor Howard Sullinger, who said he acted at the request to the Grand Jury.

The Rev. Mr. Hughes was one of several persons called to testify in the investigation into accounts of racial incidents reported in The Times under the byline of Harrison Salisbury.

Others who went into the Grand Jury room were Mayor Jess Lanier and Police Chief George Barron of Bessemer and Mayor Claude Smithson and Police Chief Tom Ward of nearby Fairfield. Several officials of other small towns in the area also appeared.

Sullinger said earlier that a preliminary investigation turned up a list of persons he believed Salisbury talked to in gathering information in the area.

[fol. 1629]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 129

ALABAMA JOURNAL SEPT 6, 1960

REV. HUGHES REAPPEARS BEFORE JURY

BESSEMER, ALA. (AP)—The Rev. Robert E. Hughes left jail today to appear before a Grand Jury investigating reports of racial conflict in the area as published in The York Times.

Hughes, a Methodist minister, was jailed Friday on a contempt charge after two brief appearances before the Grand Jury.

Hughes' attorney, Charles Morgan, Jr., said Hughes appeared today under a new subpoena, which made no mention of the records of the Alabama Council on Human Relations.

Hughes is executive director of the council, an organization with the expressed intent of improving race relations.

His earlier subpoena demanded both his appearance and the presentation of his organizations' records, his attorney said.

Hughes objected to making the organizations' records available contending they had no bearing on the case, according to his attorney.

JAILED FOR CONTEMPT

He was jailed for contempt by Circuit Judge Gardner F. Goodwyn.

Goodwyn sent the minister to jail "until you purge yourself."

Under Alabama law, the minister could have been released under bond had the grand jury adjourned. The grand jury recessed until today.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 130

ALABAMA JOURNAL SEPT 3, 1960

CLERIC APPEALS TO HUGO BLACK

[fol. 1630] BIRMINGHAM (UP)—A white minister was jailed on contempt charges Friday for refusing to answer questions of a grand jury investigating a New York Times dispatch that has resulted in a libel suit against The Times.

The Rev. Robert E. Hughes, executive director of the Council on Human Relations, was jailed after refusing to answer questions about a dispatch by Times reporter Har-

rison Salisbury on race relations in Birmingham and Bessemer.

Hughes' lawyers said they have filed a motion with U. S. Supreme Court Justice Hugh Black seeking to throw out the subpoena that ordered the minister to appear before the grand jury.

Among those who testified before the grand jury in connection with the article were Lt. Gov. Albert Boutwell, Birmingham Police Commissioner Eugene Connor and Police Chief Jamie Moore of Birmingham. Salisbury was subpoenaed but his attorneys advised him against accepting the summons.

Hughes claimed the rights of certain persons to join and contribute to organizations involved in a work of a controversial nature would be violated if he furnished information about the council. The council's expressed intent in to improve race relations.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 131

ALABAMA JOURNAL SPT. 6, 1960

JAILED MINISTER SEEKING FREEDOM: JURY BACK TODAY

BESSEMER, ALA (AP)—Attorneys for the Rev. Robert E. Hughes still were seeking freedom today for the Methodist minister who has been in jail here since last Friday.

Hughes was jailed in connection with his appearance before a grand jury investigating accounts of racial troubles in the Birmingham area as published in The New York Times last spring.

[fol. 1931] Hughes was ordered to appear before the grand jury with records of the Alabama Council on Human Rights of which he is executive director.

The organization's expressed intent is to improve race relations.

Hughes contended, through his attorneys, that the records had no bearing on the investigation.

JAILED FOR CONTEMPT

He was jailed for contempt by Circuit Judge Gardner F. Goodwyn.

Goodwyn sent the minister to jail "until you purge yourself."

Under Alabama law, the minister could have been released under bond had the grand jury adjourned. The grand jury recessed until today.

Hughes' attorneys declined to say whether he would reveal the racial council's records to the grand jury. However, one of the attorneys, Charles Morgan, said:

MAKES OWN DECISION

"We will advise him of his rights. The Rev. Mr. Hughes makes his own decisions as to matters of his own conscience and religious convictions."

Hughes has been director of the Alabama Council on Human Rights for five years. He was appointed by Bishop Clare Purcell, former bishop of the North Alabama Conference.

Hughes' attorneys Friday asked the U.S. Supreme Court to hear a plea to dismiss the grand jury subpoena against the minister, claiming that he had been summoned illegally.

The appeal to the U.S. Supreme Court is actually an appeal from the Alabama Supreme Court. The appeal was made prior to the contempt citation, and has no bearing on this charge.

[fol. 1632]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 132

ALABAMA JOURNAL SEP. 10, 1960

METHODISTS SEND HUGHES TO AFRICA

BIRMINGHAM (AP)—The North Alabama Methodist Conference today restored the ministerial credentials to The Rev. Robert E. Hughes.

Bishop Baehman G. Hodge announced the Rev. Hughes' immediate transfer to the Southern Rhodesia Conference in Africa.

The restoration of his credentials came on a request from Dr. P. D. Wilson, who asked the conference to reconsider earlier action which stripped the Rev. Hughes of his ministerial status.

JAILED FOR CONTEMPT

The Rev. Hughes, 32, was jailed over last weekend for contempt of a county Grand Jury investigating reports of racial conflict in the area as published in The New York Times.

The loss earlier this week of his ministerial credentials apparently was unrelated to his troubles with the Grand Jury.

The credentials were recalled under a conference rule prohibiting ministers from taking full time appointments outside the church in place of pastorates.

The Rev. Hughes, executive director of the Alabama Council for Human Relations, has not taken a church position.

The conference notified him last year it would take back his ministerial credentials if he did not accept a pastorate.

ACCEPTED IN AFRICA

Bishop Hodge told the conference before it voted on the action today that the National Methodist Board of Missions

informed him that Bishop E. Dodge of the Southern Rhodesia Conference will accept the minister in that area for immediate assignment.

The bishop also said that if the credentials were restored he would immediately announce transfer of The Rev. Hughes.

[fol. 1633]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 133

ALABAMA JOURNAL SEP 9, 1960

N. Y. TIMES TO APPEAL RULING ON STATE SUITS

BIRMINGHAM (AP)—An attorney says a U.S. District Court ruling that the New York Times can be sued in Alabama will be appealed to the Fifth District Circuit Court of Appeals at New Orleans.

Roderick MacLeod, the attorney, says he hopes arrangements will be completed today.

The New York Times faces libel suits totaling $3,100,000 in Alabama. The suits grew out of articles published in The Times last April dealing with race relations in the Birmingham-Bessemer area.

The New York Times faces libel suits totaling $3,100,000.

Attorneys for The Times have challenged service of the suits.

U. S. District Court Judge H. H. Grooms ruled last week that The Times could be served with suits in Alabama. He said stories leading to the suits, by Harrison Salisbury, were a result of "work or service in the State of Alabama by . . . . . an employe of the New York Times Co."

Statutes prohibited an appeal from the original ruling, but Grooms amended this Thursday.

Grooms said the case involves a question which, through appeal might speed up their termination.

A court source said the question involves application of a section of the Alabama code.

The section provides that any foreign corporation not qualified to do business in the state and does so, can be served with a process through the secretary of state providing the cause of action arose out of doing business in the State.

A Jefferson County Grand Jury this week indicted Salisbury on 42 counts of criminal libel in connection with the series of articles.

Three Birmingham officials, and three Bessemer city officials have filed six $500,000 suits against the Times, and [fol. 1634] a Birmingham city detective filed an additional $100,000 suit.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 134

ALABAMA JOURNAL SEPT 8, 1960

'DEEP TROUBLE' SEEN FOR DEMOS IN SOUTH

NEW YORK (AP)—The New York Times said today there is general agreement among many Southern political leaders, editors and men in the streets that the Democrats "face deep trouble" in six key Southern states.

The story was based on a two-week tour of the South by Times reporter Claude Sitton.

The states are Virginia, South Carolina, North Carolina, Tennessee, Florida and Texas.

FILED FROM GEORGIA

In a dispatch to The Times from Atlanta, Ga., Sitton said: "There also is evidence or erosion of the traditional loyalty to the Democratic party in Georgia, Alabama, Mississippi, Louisiana and Arkansas. However, few were willing to predict that Vice President Nixon could carry any of those five states."

William C. Battle, director of the Democratic presidential campaign in Virginia, was quoted as saying, "There's no doubt about it—we're at our low point now."

Gov. Ernest F. Hollings of South Carolina was quoted as saying Democratic nominee John F. Kennedy faced an "uphill battle" in that state.

CLOSE TO N. C.

Gov. Luther H. Hodges of North Carolina—"I think it (the race) is a little too close."

"Tennessee looks like a toss-up right now," the Times quoted a person identified only as "one of the state's most respected political observers."

[fol. 1635] Florida will be lost unless the state's Democratic officeholders join a unified campaign, according to Gov. LeRoy Collins and James Milligan, the party chairman.

"And although Texas is the home of Sen. Kennedy's vice-presidential running mate, Sen. Lyndon B. Johnson," the story said, "the Republicans claim the lead there."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 135

ALABAMA JOURNAL SEPT. 7, 1960

SALISBURY IS INDICTED FOR TIMES ARTICLES

BESSEMER, ALA. (AP)—New York Times reporter Harrison Salisbury has been indicted in connection with a series of articles on racial troubles in Birmingham and Bessemer.

The indictment returned by a grand jury Tuesday listed 42 counts of criminal libel. Deputy Circuit Solicitor Howard H. Sullinger said each count resulted from the series published under Salisbury's byline last April.

A state Supreme Court source said criminal libel is an extradictable offense. But he expressed doubt that the governor of Salisbury's home state would grant extradition if Alabama requests it.

Sullinger said the indictment was filed with Circuit Court Judge Gardner F. Goodwyn, Jr. The judge declined to con-

firm or discuss the indictments, pointing out Alabama law prohibits official statements about indicted persons prior to their arrest. Sullinger referred questions about the indictment to the court.

The deputy solicitor said the maximum penalty in Alabama on conviction of criminal libel is a $500 fine and six months in jail. The Times by Birmingham City Commissioners James W. Morgan, Eugene Connor and James T. Waggoner; Bessemer City Commissioners Jess Lanier, Ray- [fol. 1636] mond Parson and Herman Thompson. In addition Joe Lindsay, a Birmingham city detective, filed suit asking $100,000 damages.

Attorneys for The Times challenged service of the suits in Alabama. U. S. District Judge H. H. Grooms last week ruled the newspaper could be served in this state. He said the stories that led to the suits were a result of "work or service in the State of Alabama by Mr. Salisbury as an employe of The York Times Co."

The Jefferson County Grand Jury (Bessemer Division) again investigated the New York Times stories last Thursday.

A Methodist minister, the Rev. Robert E. Hughes, was jailed on a contempt citation last Friday after he refused to satisfactorily answer the grand jury. The jury recessed Friday until Tuesday, and Hughes appearing under a new subpoena, was cleared of the contempt citation.

Sullinger said before the grand jury investigation started that he asked Salisbury to be present. But he said attorneys for the reporter told him Salisbury would not appear before the grand jury.

Prior to the jury probe, Sullinger said:

"If conditions as described in the Times articles are found actually to exist, our grand jury will do all it can to remedy those conditions.

"If they don't exist, our county and city officials and every law enforcement agency in the county have been libeled and slandered."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 136

ALABAMA JOURNAL SEPT 21, 1960

TIMES LOSES BID TO DELAY LIBEL SUIT TRIAL TO BEGIN BEFORE JONES ON OCT 31

By Judith Rushin

Circuit Judge Walter B. Jones today denied a plea by The New York Times to have a $1,500,000 libel suit brought against it by Montgomery's city commissioners delayed until January, 1961.

[fol. 1637] The case has been set for jury trial Monday, Oct. 31.

Judge Jones allowed The Times until October 4 to file its answers and set this date for the parties to the suit to settle their pleadings in preparation for the trial.

Suit was brought by the commissioners after an advertisement appeared in the Times March 29, headed, "Heed Their Rising Voices" and paid for by the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

In attempting to solicit funds for the defense of the Negro minister and integration leader on a charge of perjury in filling out state income tax returns the ad, according to the commissioner's suit, contained untrue statements relating to Montgomery and its handling of Negro demonstrations at Alabama State College.

Times attorneys had also objected to answering certain questions sent them by attorneys for the city commissioners which required The Times to answer whether the statements in the ad were true or false and what efforts The Times had made to investigate the alleged falsity of these statements.

Judge Jones ruled that while The Times attorneys could not be required to answer whether the statements were true or false, they could be required to state whether they contended or claimed the statements would be true.

He held that the truth or falsity of the statements contained in the advertisements would be a jury question.

Commissioners Earl James, L. B. Sullivan and Frank Parks are represented by attorneys Sam Rice Baker and Roland Nachman. Times attorneys are Roderick Beddow, Rod McLeod and Eric Embry, all of Birmingham.

[fol. 1638]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 137

ALABAMA JOURNAL SEPT. 27, 1960

'TIMES' RULING APPEAL SLATED

BIRMINGHAM, ALA. (UP)—An attorney for The New York Times said today a federal court ruling permitting the newspaper to be sued in Alabama will be appealed here some time this week.

The U. S. 5th Circuit Court of Appeals Judge Richard T. Rives granted the Times permission to file the appeal after Judge H. H. Grooms had certified the attorney's request for an appeal earlier this month.

Grooms ruled on Sept. 2 the Times could be served with seven libel suits totaling $3.1 million brought as a result of an article by Harrison E. Salisbury about race relations here. The suits were filed by the Birmingham and Bessemer City Commissioners and Birmingham detective Joe Lindsay.

The suits will be consolidated for purposes of appeal consideration.

Eric Embry, attorney for The Times, has argued that the newspaper could not be sued in Alabama because it does not do business in this state.

Grooms held the newspaper did do business in Alabama when it sent Salisbury into the state to gather information.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 138

ALABAMA JOURNAL OCT 29, 1960

TIMES LOSES ATTEMPT TO THROW OUT SUIT

By Judith Rushin

The New York Times lost yesterday in its last attempt to have a libel suit brought against it by Montgomery's [fol. 1639] city commissioners thrown out.

Circuit Judge Walter B. Jones over-ruled contentions by defense attorneys that the commission suit failed to state a good cause of action and announced the trial would begin at 10 a. m. Tuesday.

Pleadings were then filed by Times attorneys denying that the newspaper was guilty of libel in printing an advertisement paid for by the Committee to Defend Martin Luther King, which contained alleged defamatory statements about the Montgomery commissioners.

In additional pleadings on the case to be tried Tuesday, The Times denied that it published the advertisement, and said the ad was paid for by the advertising agency which ordered it.

The Times also maintained that the words in the ad were not "libelous or defamatory according to the ordinary import of the language contained in the advertisement."

It said further that the words did not damage "the reputation of the plaintiff or injure the plaintiff in his present trade, business or profession," and denied that the words imputed to the plaintiff "any incapacity or lack of due qualifications to fill the public office held by the plaintiff or charge him with any positive past misconduct which injuriously affects him in his public office or charges him with the holding of principles which are hostile to the maintenance of government."

NEGROES' ATTORNEYS

Also present at Friday's pre-trial hearing were attorneys for four Negro ministers who have been made defendants in the suit along with The New York Times.

The Negro ministers are Ralph D. Abernathy and S. S. Seay, Sr., of Montgomery, Fred L. Shuttlesworth of Birmingham and J. E. Lowery of Mobile.

Their attorneys also attacked the validity of the suit brought against them but were overruled by Judge Jones' decision.

Each of the city commissioners, Earl James, L. B. Sullivan and Frank Parks, have sued for $500,000.

Sullivan's suit will be tried first.

[fol. 1640]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 139

ALABAMA JOURNAL OCT 11, 1960

LIBEL SUITS

The Washington Post has begun discussion of the controversy between Birmingham and the New York Times in stories which appear about as biased as were those of Times Correspondent Salisbury.

These are the stories which resulted in a number of libel suits yet to be tried.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 140

ALABAMA JOURNAL OCT 28, 1960

CITY'S LIBEL CLAIMS ATTACKED BY TIMES

By Judith Rushin

Attorneys for The New York Times and for four Negroes being sued by Montgomery's city commissioners for libel attacked the validity of suit against them this morning before Circuit Judge Walter B. Jones.

Judge Jones ruled he would rule on the defense arguments at 3 p.m. today. If he decides then against the Times, the case will go to trial Tuesday.

DEFAMATION CHARGED

Montgomery city commissioners Earl James, L. B. Sullivan and Frank Parks have each asked $500,000 claiming they were defamed in an advertisement which appeared in the New York Times March 29.

The ad endorsed by the four Negro defendants Ralph D. Abernathy and S. S. Seay, Sr. of Montgomery, Fred L. Shuttlesworth of Birmingham and J. E. Lowery, all ministers and leaders in integration activities.

Entitled "Heed Their Rising Voices," the advertise-
[fol. 1641] ment attempted to solicit funds for the defense of integration leader, Rev. Martin Luther King, Jr., who was tried here in Circuit Court in May and acquitted of perjury regarding the filing of state income tax returns.

Included in the ad were statements relating to alleged police treatment of Alabama State College students who participated in a mass demonstration at the State Capitol.

The ad charged the Montgomery police with ringing the college campus armed with shotguns and teargas and maintained that when the students protested to state authorities by refusing to re-register, "their dining room was padlocked in an attempt to starve them into submission."

Birmingham attorney T. Eric Embry, representing The New York Times, argued before the court this morning that the complaint drawn by the commissioners' attorneys was improper in that it joins three offenses in the same count, that it does not allege facts showing that the ad referred to the plaintiffs, and that it does not allege damages to the plaintiffs.

Negro attorney, Solomon S. Seay, Jr. representing the Negro defendants, told the court his arguments were the same as those voiced by Embry and added that a whole class of people was mentioned in the ad, not the Montgomery commissioners specifically.

Seay said the plaintiffs were taking two paragraphs of the ad out of context and that, read as a whole, one could

not get the impression that the commissioners were singled out.

He said the ad not only referred to incidents in Montgomery but to similar occurrences in a number of Southern cities.

CITIES COMMITTEES

The Negro lawyer said further that the ad was the responsibility of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, and that the names of the Negroes whom he represents were listed among the endorsers below the advertisement.

Montgomery attorney Roland Nachman, one of the attorneys for the commissioners, defended the merits of the complaint saying there could be no doubt but that the ad referred to the city commissioners when it mentioned "police" as the police cannot act without the direction of the [fol. 1642] commissioners.

He attempted to refute other arguments of the defense by citing Alabama cases which he said were in support of his position.

Because of the volume of the pleadings and the number of cases cited by both sides, Judge Jones recessed court to consider all the evidence.

Ten attorneys involved in the controversial case were present for this morning's hearing.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 141

ALABAMA JOURNAL OCT. 31, 1960

TIMES LIBEL TRIAL BEGINS TUESDAY

The New York Times, which will face charges of libel in Circuit Court tomorrow, has filed an additional plea attempting to show lack of malice.

Attorneys for The Times stated in the new plea that the advertisement which Montgomery's city commissioners

claim libeled them was published with no knowledge or reason to believe that the facts were false.

In support of this contention, the plea goes on to state that the ad was paid for by one John Murray, whom the newspapers believed trustworthy, and was signed and endorsed by persons believed to be trustworthy.

The pleadings are based on the New York Civil Practices Act which Times attorneys say applies in the case because the advertisement was published in the State of New York.

The act allows for the introduction of evidence showing lack of malice which may aid in lessening damages.

Suits for $500,000 have been filed against The Times by each of the three city commissioners who claim they were [fol. 1643] libeled by words in an advertisement of March 29 which attempted to solicit funds for the defense of Negro leader Martin Luther King who was tried and acquitted of perjury in Circuit Court here.

Also named as defendants, along with the Times, are four Alabama Negroes who endorsed the ad. They are Ralph D. Abernathy and Solomon S. Seay, Sr., of Montgomery, Fred H. Shuttlesworth, of Birmingham and J. E. Lowery of Mobile.

The first case, brought by Montgomery Police Commissioner L. B. Sullivan, will begin at 10 a.m. tomorrow before a Circuit Court jury. Judge Walter B. Jones will preside over the trial.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 142

ALABAMA JOURNAL NOV 2, 1960

L. B. SULLIVAN TESTIFIES IN TIMES SUIT

By Judith Rushin

Police Commissioner L. B. Sullivan told a Circuit Court jury this morning that in his opinion statements in a New York Times advertisement referred to him and reflected upon his "ability and integrity."

Attorneys for Sullivan in his $500,000 libel action against the New York newspaper rested their case after hearing from one more witness.

DEFENSE TO OPEN

Defense attorneys for The Times and for four Alabama Negroes also being sued are expected to present their evidence this afternoon.

Asked by his attorney, Roland Nachman, Jr., whether or not he thought a statement in the ad concerning police "ringing" the Alabama State College campus with guns and tear gas after student demonstrations were true or false, Sullivan said, "The statement is completely false and I resent it very much."

[fol. 1644] NO PADLOCKING

As to whether or not the college lunch room had been "padlocked in an attempt to starve the students into submission," Sullivan said, "It has never happened in the City of Montgomery."

Did the police department have anything to do with bombing Martin Luther King's home here? Nachman asked.

"There has never been any incident of bombing or assaulting any person by the police," the commissioner replied.

"Was King arrested seven times as the ad states?"

"That is false."

"Did you have anything to do with procuring the indictment of King?"

"Nothing whatsoever."

"Did you testify before the grand or petit jury?"

"I testified at the trial," (King was tried and acquitted of perjury in filling out state income tax returns.)

"As to his guilt or innocence?"

"No, as to whether or not Dr. King could receive a fair trial in Montgomery."

"Do you consider that the statements in the advertisement refer to you and are associated with you?"

"I certainly do—the statements concerning arrest of people and truck loads of police. I feel they are associated with me."

THOUGHT A REFLECTION

Sullivan then told Nachman he thought the statements reflected upon his "ability and integrity" and that those statements "have been proved here as not true."

On cross examination, Times attorney T. Eric Embry of Birmingham attempted to prove that Sullivan had not in fact been damaged by the wording in the ad published March 29, in The Times, soliciting funds for the defense of King.

"Have you ever been ridiculed? Do you feel ill at ease walking about the streets of Montgomery?" Embry asked.

"I haven't had anyone come up to me personally and say [fol. 1645] they held me in ridicule because of the ad," Sullivan said.

"Has anyone threatened to have you removed from office?" Embry asked to which the commissioner replied, "No."

"Have you been shunned by any one in a public place or at the house of a friend or in any restaurant where you have been since the publication of the ad?"

"I don't recall," Sullivan answered.

Negro attorney V. Z. Crawford of Mobile, who represents the four Negro defendants, then asked Sullivan if he filed suit to get publicity to run for another office.

Circuit Judge Walter B. Jones threw the question out as improper as Sullivan's attorney jumped up to object.

After the plaintiff rested his case this morning, Negro atty. Fred Gray, of Montgomery, who is also representing the Negro defendants, filed a motion with the court to have his clients excluded on the grounds that Sullivan's attorneys failed to connect them with the case.

Judge Jones overruled the motion, recessed the trial for lunch and said court would re-convene at 2:20 today.

DEFENDANTS

The Negro defendants, Ralph D. Abernathy, S. S. Seay, Sr., Fred Shuttlesworth and J. E. Lowery, were made parties to the suit because their names appeared at the bottom of the full page ad allegedly as endorsers.

A Dothan trucking official was the first witness to take the stand this morning as the case went into its second day. Horace D. White, an officer if the P. C. White Truck Lines, said Sullivan had formerly worked for his company as safety director.

White testified that he believed the information in the ad about police handling of student demonstrations here he would be reluctant to re-hire Sullivan.

OTHER INCIDENTS

Testimony also went into the record concerning other incidents mentioned in the ad. Circuit Clerk John Mathews [fol. 1646] read the names of student demonstrators who pleaded guilty to disorderly conduct and refusing to obey an officer and the fines they received, over Gray's objection that the cost of appeal was the reason for their pleading guilty.

Police Detective Lt. E. Y. Lacy told the jury of the bombings at King's house, saying one of the bombs failed to go off. The other caused no injury.

Lacy said the police conducted an intensive investigation into the incident and even worked with other departments throughout the country.

The advertisement had stated that King's house was bombed and his wife and child were almost killed.

Police officer O. M. Strickland testified that he was one of the officers who arrested King for loitering around the city hall courtroom after he had been refused admittance because he did not produce a subpoena.

"Was King assaulted?" Nachman asked.

"No, he was not," Strickland replied emphatically.

Nachman then questioned Strickland as to his height and weight in relation to King's and solicited the information that this policeman was a smaller man.

THE ASSAULT QUESTION

The ad also charged that King's "person had been assaulted."

Another witness for the plaintiff, Dr. Frank R. Stewart, state superintendent of education, told the court that when

nine students at Alabama State were expelled by the state board for disobeying the law during the demonstrations the board heard no discussion about "singing on the capitol steps."

According to the advertisement in question, the expulsion came after students gathering at the capitol and sang "My Country, 'Tis of Thee."

YESTERDAY'S ACTION

Yesterday, attroneys for the Times began by calling witnesses to lay the groundwork for their suit.

Five witnesses testified they felt an ad soliciting funds [fol. 1647] for the defense of the Rev. Martin Luther King, Jr. clearly reflected on Sullivan and his conduct of office even though he was not specifically mentioned in the ad.

Attorneys representing The Times, however, managed to get most of these witnesses to concede that they never believed the statements which they felt referred to Sullivan and that they think no less of the police commissioner's integrity today as a result of the publication.

The first witnesses were Grover C. Hall, Jr., editor of The Montgomery Advertiser; Arnond Blackwell, a real estate and insurance broker; Harry Kaminsky, sales manager of a downtown clothing store; William M. Parker, a service station operator, and H. M. Price, Sr., who runs a food service equipment business.

SAY AD REFLECTED ON CITY

All made substantially the same testimony, that they felt the ad reflected on the city government and Sullivan in particular as police commissioner. Had they believed the statements to be true, Sullivan would have fallen in their estimation, they testified.

Sullivan's attorneys attempted to introduce evidence of racial tension that existed in Montgomery at the time the ad appeared. Advertiser Assistant Editor William H. McDonald was called to the stand to identify pictures of Negro demonstrations during March, but Judge Walter B. Jones ruled such evidence irrelevant and inadmissible.

There was one brief skirmish before testimony began.

When Atty. Calvin Whitesell, a city attorney representing Sullivan along with several others, began reading the controversial advertisement, Negro Atty. V. Z. Crawford of Mobile objected that Whitesell was pronouncing the word "nigger" instead of "Negro" as it appeared in the ad.

Judge Jones asked Whitesell if he was indulging in "interpolations" in his pronounciation. Whitesell replied he was pronouncing the word as he had done "all my life."

To newsmen, he did not seem to be saying "nigger" but something closer to "nigra" or "Nigro."

[fol. 1648] SAY AD NOT LIBELOUS

The Times, represented by the Birmingham law firm of Beddow, Embry and Beddow, does not contend the ad was entirely true. They do maintain, however, that it did not refer to any identifiable person nor is it libelous.

Further they contend that it came from a reputable advertising agency and was signed by many persons of high character.

They cited several types of advertising which The Times will not accept. This was done to prove that the newspaper exercises diligent caution in screening out libelous, distasteful, and erroneous advertising.

Montgomery's other two commissioners, Mayor Earl James and Frank Parks, have also filed $500,000 suits against The Times.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 143

ALABAMA JOURNAL NOV. 3, 1960

OPPOSING SIDES GIVE FINAL ARGUMENTS IN TIMES LIBEL SUIT

JURY EXPECTED TO GET CASE SOMETIME THIS AFTERNOON

By Judith Rushin

Attorneys for Commissioner L. B. Sullivan, for The New York Times, and for four Alabama Negroes hammered

away at their opposition in final jury arguments today in an attempt to get a verdict for their clients, The case was expected to go to the jury this afternoon.

Robert E. Steiner, III, speaking for Sullivan re-emphasized that the commissioner is asking for $500,000 for the libelous statements he says The Times printed about him in an advertisement.

Negro attorney Fred Gray, representing the four Negroes who allegedly endorsed the ad, maintained that Sullivan's attorneys "failed miserably" to prove that the ministers actually endorsed the ad or knew anything about it."

THEY DIDN'T "TRACT"

In a question which drew laughter from attorneys and [fol. 1649] spectators Gray asked the jury, "How could these individuals retract something—if you'll pardon the expression—they didn't tract?"

T. Eric Embry, a Birmingham attorney representing The Times, shouted to the jury, "Where is the evidence that has shown you that Mr. Sullivan suffered any injury?"

"Has Mr. Sullivan suffered or has possibly his standing in the community been enhanced?"

ONLY WAY TO IMPRESS

Steiner, in his opening remarks, said the only way to impress on The Times or any other newspaper or magazine that they must tell the truth is to "hit them in the pocketbook."

He then pointed out the falsity of certain statements contained in the full page ad which ran March 29 to solicit funds for the defense of Negro integration leader Martin Luther King in his perjury trial here.

"They couldn't even get the song right," he said, referring to a statement in the advertisement that Alabama State College students sand "My Country, 'Tis of Thee" on the Capitol steps.

Steiner said one of The Times' correspondents reported that the song was "The National Anthem."

He also attacked the statement concerning police "ringing" the campus with shotguns and tear gas by saying, "It

would take thousands of police probably to ring the campus —approximately 12 square blocks."

As to the reference to the ad to "state authorities padlocking the dining room in an attempt to starve the students into submission," he shouted, "That didn't even happen. They couldn't prove it."

"ATTACKED SULLIVAN"

Steiner also mentioned a statement about King's house being bombed and said although Sullivan was not in office when the bombings occurred, "the ad doesn't say so—it was designed to attack the present city commission."

"Let The Times explain to you who in the world they were talking about if it wasn't the city commissioners of Montgomery," he told the jury.

[fol. 1650] In winding up his argument, Steiner said the fact that the names of two Negroes from Montgomery (Ralph D. Abernathy and S. S. Seay, Sr.) were placed on the ad was "proof positive the ad was talking about Mr. Sullivan."

Gray referred to his clients in the case, Abernathy, Seay, J. E. Lowery of Mobile and Fred Shuttlesworth of Birmingham, as "the forgotten defendants in this case."

"They had no business in the case in the first place," he said.

Gray told the jurors the testimony conclusively shows the Negro defendants didn't know their names were on the ad or that the ad was even going to be published.

He said only one witness for Sullivan or for The Times mentioned his clients and that was Sullivan himself, who said he had sent letters to the four Negroes asking for a retraction.

Embry contended that The Times took all precautions a "normal human being" would take before accepting the advertisement and said Sullivan's attorneys were suggesting that a newspaper "set up some superhuman system" to screen advertising.

He told the jury the only statement in the ad which was not substantially correct was the one referring to

padlocking the college dining hall and "that statement could not possibly have referred to Sullivan," he said.

Embry also accused Steiner of "appealing to every base motive in man by snide references to people living in other parts of the country."

Attorneys for The Times Wednesday called three employees of the newspaper to testify to the effect that The Times accepted in good faith the ad which prompted the Sullivan suit and similar legal action by two other city commissioners and the governor.

CONFLICTING TESTIMONY

Though Times attorneys produced evidence that a noted Negro leader, A. Philip Randolph, had notified the newspaper that the endorsers of the ad had consented to use of [fol. 1651] their names, Negro attorneys for the four drew conflicting testimony.

New York writer Jon Murray testified that names of the four Alabma Negro defendants were not in the list originally covered by a letter from Randolph. He said their names were added by Bayard Rustin of New York, executive director of the Committee to Defend Martin Luther King, which sponsored the advertisement.

Last witness of the day was Harding Bancroft, secretary of The New York Times Co., called by Times attorneys. He testified that the newspaper considered the ad as having no reference, direct or indirect, to Sullivan.

Times advertising salesman, Gershon T. Aronson and D. Vincent Redding, manager of the newspaper's advertising acceptability department, testified that they found no reason to question the advertisement.

Redding said he depended on reputations of some endorsers of the ad in determining its reliability.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 144

ALABAMA JOURNAL DEC. 14, 1960

JAN. 14 HEARING SET FOR NEW TRIAL BID

Oral arguments have been re-scheduled for Jan. 14 on a motion for a new trial on the $500,000 libel suit judgment against The New York Times and four Negro ministers.

The state court hearing on the request by the newspaper and the clergymen, originally set for Friday, was postponed under an agreement by opposing attorneys.

Pleas for a new trial were filed soon after a jury awarded Montgomery Police Commissioner L. B. Sullivan $500,000 damages for an full page advertisement which appeared in the Times March 29.

Sullivan, whose suit was the first of three brought by Montgomery's city commissioners, was awarded the largest [fol. 1652] amount of damages in state history after a three-day trial early last month.

Meanwhile, the second libel suit, filed by Mayor Earl James, has been set for jury trial Jan. 30. No date has been fixed for trial of Commissioner Frank Parks' suit.

The libel actions stemmed from a Times ad soliciting funds for the Rev. Martin Luther King, Jr. before the Negro integration leader was acquitted on charges of lying about his state income taxes.

Sullivan and the other public officials said the ad, which criticized handling of Negro college student demonstrations here last March, was false and malicious and held them up to ridicule and shame.

The Negro defendants whose names appeared in the advertisement are the Rev. Ralph D. Abernathy and the Rev. Solomon S. Seay, Sr. of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 145

ALABAMA JOURNAL FEB. 1, 1961

COURTROOM SEGREGATED IN TIMES SUIT DEFENSE PRESENTED: JURORS MAY GET CASE TODAY

By Judith Rushin

Whites and Negroes sat on opposite sides of the courtroom during the third day of The New York Times libel suit today, ending the integration allowed yesterday.

Circuit Court Judge Walter B. Jones ordered the races separated in a sharply-worded statement from the bench as Mayor Earl James' half-million dollar suit against the newspaper and four Negro ministers got under way.

JURY WATCHES

Conley said several Negro spectators were asked to move in the present of the jury and thus the Negro defendants were deprived of a fair and impartial trial.

[fol. 1653] He cited the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution as being violated.

Judge Jones in overruling Conley's motion for a mistrial announced he was ready for his "judicial power and authority to be tested.

ACCEPTS CHALLENGE

Jones said he accepted "the challenge of counsel for the four Negro defendants, that, under the 14th Amendment, he is without authority and is powerless to direct how a trial shall be conducted."

"The trial judge is willing to meet the challenge. He accepts it, he puts the laws of Alabama against the wishes and whims of the lawyers and the four Negro defendants," Jones continued.

Explaining why he was re-enforcing segregation in his court-room after allowing the races to mingle on Tuesday, Jones said yesterday "there was a studied effort by friends of the four individual defendants to pack the courtroom with members of their race.

"It would appear that there has been a planned effort to drum up members of the Negro race to take up the seating capacity of the courtroom.

"Negro spectators yesterday out-numbered white spectators about 15 to one, and recognized rabble-rousers and racial agitators milled about the courtroom.

The judge stated that if the 14th Amendment is construed to regulate his control of the courtroom then "the 14th Amendment has no standing whatever in this court."

"WORKS OVERTIME"

"The judge presiding here today knows that it is quite the fashion in high judicial places to work the 14th Amendment to work to deliberately neglect the more important parts of the federal constitution, Jones said.

He said Alabama would stand on the 10th Amendment which declares that powers not delegated to the United States by the Constitution or prohibited by it to the states are reserved to the states.

"The states of the union have reserved unto themselves, [fol. 1654] have never surrendered to the government at Washington, the right, the duty and the power belonging to the judges of their state courts to direct how law suits shall be tried in the courtrooms of the state," he said.

PRONUNCIATION QUESTION

He also touched on a question brought up yesterday by Conley, that of the pronunciation of "Negro."

Terming Negro attorney's objections "appeals to race prejudice" and "grandstand plays to the Negro spectators in the courtroom," Jones said their further repetition will invoke the summary contempt power of the court."

The objection was to attorney Robert Steiner's pronunciation, which sounds like "nigra."

BORN IN ENGLAND

"We will now continue with the trial of this case under the laws of the State of Alabama nad not under the 14th Amendment," the judge said in conclusion, "and in the belief and knowledge that the white man's justice, a justice born long centuries ago in England, brought over to this country by the Anglo-Saxon Race, and brought to its full flower here, a justice which has blessed countless generations, will give the parties at the bar of this court, regardless of race or color, equal justice under law."

At the end of the four-page statement, Concley again rose and announced that he "humbly takes exception to the court's ruling as well as the discourse."

TRIAL PROCEEDS

The trial then proceeded with Times attorneys calling to the stand Vincent Redding, manager of the advertising acceptability department of the newspaper.

Attorneys for the plaintiff, Mayor James, had rested their case yesterday.

Redding said his job was to "screen advertising" according to certain standards set up by The Times and that he had passed on the ad which James' claims libeled him, published in the March 29, 1960, edition.

[fol. 1655] The ad, sponsored by a group to defend Martin Luther King, contained several statements concerning police action against King and Negro demonstrators at Alabama State College.

In answer to questions by Times' attorney Eric Embry, Redding said he knew of Montgomery's racial situation at the time the ad was published "only in a general way."

He testified he saw nothing in the copy which seemed to him to be false, deceptive or misleading, and approved it relying on the names of several attached to the ad.

Included in this list of signers, on whom Redding relied, were Raymond Pace Alexnader, Mrs. Ralph Bunche, Dr. Harry Emerson Fosdick, Clarence Pickett, Mrs. Eleanor Roosevelt, Norman Thomas, Harry Belafonte, Malon Brando, Nat King Cole, the Rev. Donald Harrington, Rabbi Edward Klein, Sidney Potier, and A. Philip Randolph.

On cross examination by attorney Roland Nachman, Redding • • •

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 146

ALABAMA JOURNAL JAN 13, 1961

ARGUMENTS IN TIMES CASE POSTPONED

New trial arguments in the $500,000 libel suit judgment against The New York Times and four Alabama Negro leaders have been postponed to March 3.

Circuit Judge Walter B. Jones was scheduled to hear them Saturday.

The judgment, believed to be the largest in Alabama history, was awarded L. B. Sullivan as a result of a full-page advertisement in The Times last March 29.

The ad solicited funds for the defense of the Rev. Martin Luther King, Jr. while the Negro integration leader was awaiting trial on charges of lying about his Alabama state [fol. 1656] income tax. King was later acquitted.

Sullivan contended the advertisement as critical of police handling of a Negro student demonstration at Alabama State College and that it held him up to ridicule. The Times said it was not intended as a reflection on the police commissioner.

The other two city commissioners—Mayor Earl James and Frank Parks—have filed similar libel suits asking $500,000. James' complaint is scheduled for trial Jan. 30.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 147

ALABAMA JOURNAL JAN. 18, 1960

JUDGE DENIES ANOTHER TRIAL TO 4 NEGROES

Circuit Court Judge Walter B. Jones ruled today that four Negroes who are co-defendants with The New York Times in a $500,000 libel suit judgment have forfeited their chance at a new trial.

Jones said a motion for a new trial died last Saturday when the Negroes failed to ask for a continuance.

Lawyers for the Times, acting separately, requested and were granted a postponement of the new trial arguments until March 3. The Negro attorneys contended that automatically gave them an extension of time.

But Jones said it did not. He ruled that the Negroes should have filed a separate request for a continuance.

HALF-MILLION AWARD

The Alabama Negroes—the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr., of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham, and the Rev. J. E. Lowery of Mobile—and the New York newspaper are defendants in a half million dollar judgment awarded to Montgomery Police Commissioner L. B. Sullivan last November.

Attorneys for all defendants filed a motion for a new trial [fol. 1657] and it was set for hearing last Saturday. The Times lawyers asked for a continuance, Jones said; the Negroes' lawyers did not.

Meanwhile the judge also ruled that Mayor Earl James, who also has sued The Times and the four Negroes, does not have to explain his motive. He made the ruling yesterday as Times attorneys sought to question the mayor in advance of the scheduled Jan. 30 hearing on his suit.

THREE FILE SUITS

James, Police Commissioner L. B. Sullivan and Parks Commissioner Frank Parks each has filed a $500,000 libel

suit against the newspaper and the four Alabama Negroes as a result of a Times advertisement last March 29.

In the first suit tried, a jury awarded Sullivan the full amount last November. James' complaint is scheduled for trial next.

All three commissioners claim they were held up to ridicule in the full-page Times ad, dealing with police handling of Negro college student demonstrations against segregation here early last spring.

Roderick McLeod, Birmingham attorney for the newspaper, asked James why he brought the lawsuit, what he hoped to gain by it, and whether he had conferred with the other commissioners about it.

The mayor's lawyers protested the line of questioning, and Jones, after hearing opposing arguments, ruled that James' reasons for the libel suit are his own business.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 148

ALABAMA JOURNAL JAN 31, 1961

NEGROES INTEGRATE CIRCUIT COURTROOM

By Judith Rushin

Some 50 Negro spectators poured into the courtroom where Mayor Earl James' $500,000 libel suit against The New York Times is being held this morning, occuping nearly every row of seats.

The group apparently arrived to test Circuit Judge [fol. 1658] Walter B. Jones ruling yesterday that there would be no legally enforced segregation.

There were no incidents as Negroes sat by the few white people present and the judge made no effort to have the spectators sit on opposite sides of the courtroom according to race as is the usual custom.

Later in the morning, however, he did invoke a rule prohibiting spectators from coming and going while a witness is testifying on the stand.

He stationed his bailiff, Lee Cook, and several deputy sheriffs at the door to the courtroom to enforce this rule.

At one point in today's proceedings, Negro attorney Vernon Crawford of Mobile, who is representing four Negro defendants in the case, asked the court to declare a mistrial because testimony was introduced that some 30 Negro college students pleaded guilty and paid fines for anti-segregation demonstrations at the Alabama State College campus.

Crawford said this testimony, given by court clerk John R. Mathews from his records, was "highly prejudicial" to his clients.

The testimony was presented by Mayor James' attorneys because of statements in a New York Times advertisement relating to racial conditions in Montgomery.

The half-million dollar suit by the mayor is based on an ad which ran in The Times on March 29, 1960, entitled "Heed Their Rising Voices," and sponsored by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South.

King was later acquitted by a Montgomery County Circuit Court jury of a perjury charge based on alleged state income tax evasion.

STEART CALLED

As the libel trial went into its second day this morning, attorney for James called State Superintendent Frank R. Stewart to the witness stand to question him about the expulsion of nine students at the Negro college.

Stewart said the expulsion did not come about because a group of Negroes sang "My Country, 'Tis of Thee" on the [fol. 1659] State Capitol steps as charged in The Times ad and that the state board in fact didn't know of the Capitol incident at the time of its meeting.

Asked about another statement in the ad to the effect that the college dining hall was padlocked to students when they refused to re-register in protest of the expulsion, stewart said, "That's a false statement, of course. It was never padlocked."

Stewart also explained that the nine students were expelled because they violated college regulations by participating in several demonstrations. He produced catalogs in which these rules were printed.

TELL'S CITY'S STAND

On cross-examination by Times attorney Eric Embry of Birmingham, the state superintendent admitted that city officials, including Mayor James, had nothing to do with operating the college or expelling the students but said they were responsible for maintaining law and order.

When Negro attorney Charles Conley, representative for the four Alabama Negro ministers who are also defendants in the case, asked Stewart if it was true the Board of Education was trying to make an example of the nine students, Embry objected and Judge Jones sustained his objection.

Three Montgomery residents were then called upon by the plaintiff to testify to their reaction to The Times ad.

Real estate and insurance man Gordon Meriwether, Sr. told the jury the ad brought to mind the city commission of Montgomery and said if he had believed the statements in the ad he would "never have supported any one of them again."

W. T. Jones, chairman of the Montgomery County Board of Revenue, also testified that he thought the ad referred to city officials.

He said, however, that he never believed the statements in question to be true and that he had known the mayor since 1927, having taught him in school.

Service station and parking lot owner Carl W. Johnson, who said he had known James since the thirties, stated that he "acquainted the statements with the mayor and his associates."

Johnson said he, too, would refuse to vote for James and [fol. 1660] the other two commissioners if he believed the charges in the ad.

Written questions propounded to The New York Times and the newspaper's answers were then read into the record by attorneys Roland Nachman and Robert Steiner.

PROTESTS "SOUND"

During Steiner's reading to the answers, Negro attorney Conley jumped up to object to the pronunciation of "Negro." Steiner's pronunciation was "nigra."

Judge Jones remarked sternly that Steiner was pronouncing the word as he always had and said, "I'll leave the pronunciation to him."

Testimony was introduced of Mayor James' request for a retraction of portions of the ad and The Times' failure to so retract.

In November of last year, Police Commissioner L. B. Sullivan received a $500,000 verdict from a Circuit Court jury against The Times and the four Negro ministers in a libel suit based on the same ad.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 149

ALABAMA JOURNAL JAN. 30, 1961

DELAY IS DENIED IN TIMES TRIAL

By Judith Rushin

Montgomery's bearded men and hoop-skirted women were cited as grounds for a continuance of Mayor Earl James' $500,000 libel suit against The New York Times this morning.

The continuance, asked by Times attorney Eric Embry and Negro attorney Charles Conley, was denied by Circuit Judge Walter B. Jones and the selection of jurors got under way shortly after noon.

Embry argued that the New York newspaper couldn't get a fair trial "because of the relation between the nature of the subject matter of this action and certain of the issues of the War Between the States, to wit: segregation of the races and the feeling presently engendered in this community by reason of the revival of such issues in the minds of the community and the emotions and feelings of sectionalism."

[fol. 1661] BASED ON AD

The libel action is based on an advertisement in The Times of March, 1960 soliciting funds for the defense of Martin Luther King and the Struggle for Freedom in the South. (King was tried and acquitted for state income tax evasion.)

Mayor James claims in his suit that he was libeled when the ad referred to certain police action regarding student demonstrations at Alabama State College for Negroes.

A Circuit Court jury in November last year returned a half-million dollar verdict in favor of Police Commissioner L. B. Sullivan based on the same advertisement.

4 NEGROES NAMED

Also named as defendants in the suits were four Alabma Negro leaders whose names appeared at the bottom of the ad allegedly as endorsers.

In arguments before Judge Jones in his private chambers this morning, Embry said the Sullivan verdict "could only have been the result of the passion and prejudice revived by that celebration (the Centennial Commemoration) and other events embraced within that Civil War celebration."

He said couert was evern adjourned one day during the Sullivan trial while ceremonies took place changing the name of Court Square to Confederate Square.

In answering Embry's statements in support of a continuance of the case to the fall term of court, Attorney Roland Nachman remarked, "This is strange procedure today," referring to the Centennial question.

NO BEARDS

Nachman said he also wanted to point out that "none of the plaintiff's attorneys have beards."

Attacking The Times' grounds for continuance, he cited a number of cases where the same question of community prejudice was involved and the courts ruled that the cases should be tried.

He pointed out a trial of Communist leaders in New York, the case of newspaper writer Victor Reisel who was blinded by acid thrown in his face, the Hoffa trial in Washington, and the New York trial of the Apalachin gang.

[fol. 1662] Negro Attorney Conley also filed a motion this morning for Judge Jones to recuse himself from trying the case because of his position on the board of jury supervisors and the possibility of his being called as a witness.

Conley said the judge's participation in the trial deprives his clients of a fair and impartial trial.

COME TOO LATE

Judge Jones ruled that the motion had come too late in the proceedings and thus denied it.

Conley next attacked the composition of the jury with a motion to quash the venire, saying not all qualified male citizens in the county were in the jury box.

His motion stated that approximately 37 percent of the eligible male citizens are Negroes but only 5 per cent are in the jury box.

This is "highly iregular, arbitrary, capricious, and contrary to the method prescribed by the Constitution and laws of the State of Alabama and of the United States," Conley said.

"The names of only a token few of the eligible Negro male citizens of this country have been placed in the jury box," he continued.

Judge Jones ruled that this motion was also too late.

Conley then moved for the 34-man jury sworn in this morning to be declared void because it doesn't contain a cross-section," having only one Negro. The motion was denied.

In a final plea for continuance, Embry told the judge, "We're going up against a stacked deck, so to speak."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 150

ALABAMA JOURNAL FEB. 9, 1961

TIMES LIBEL SUIT LOOMS BY SELLERS

Former Police Commissioner Clyde Sellers is apparently [fol. 1663] preparing to file a libel suit against The New York Times and four Alabama Negro ministers; the Journal has learned.

The Rev. Ralph Abernathy, president of the Montgomery Improvement Association, confirmed that he had received a demand from Sellers to retract an advertisement which appeared in the Times last spring soliciting funds for the defendse of the Rev. Martin Luther King.

FIRST LEGAL STEP

A demand for retraction is the first legal step toward filing a libel suit. Demands for retraction were made by Gov. Patterson and Montgomery's three city commissioners preliminary to filing their libel suits against the newspapers and the four ministers.

Juries have already awarded Mayor Earl James and Commissioner L. B. Sullivan the full $500,000 they sued for. Commissioner Frank Parks' $500,000 suit is still pending as is the governor's, which is for $1 million.

Contacted this morning, Sellers refused to discuss the case. While he did not deny sending the demand for retraction, he declined to say how much he plans to sue for.

Sellers was defeated in 1959 by Sullivan. Portions of the advertisement referred to events which took place during the administration of both men.

One section of the ad stated that the dining hall at Alabama State College was padlocked "to starve students into submission" after anti-segregation activity in 1960, during Sullivan's administration.

Another section deals with the number of times King was arrested and with the bombing of his home in 1957, which took place while Sellers was police commissioner.

SOLICITED FUNDS FOR KING

The ad solicited funds for King's defense when he was charged with perjury in connection with filing state income tax returns. He was later acquitted of the charge.

The names of Seay, Abernathy, the Rev. J. E. Lowery of Mobile, and the Rev. Fred L. Shuttlesworth of Birmingham appeared on the ad endorsing the appeal, but the ministers [fol. 1664] contend they did not give permission for the use of their names.

At the trial of James' suit last week, John Murray, who wrote the ad, confirmed that the ministers' names were used without permission. Attorneys for the commissioners maintain, however, that the ministers should have made some effort to retract the ad.

Atty. S. S. Seay, Jr., who represents the four Negro ministers, said Sellers' letter was substantially the same as the earlier demands for retraction.

Seay said he understood Shuttlesworth has already received a copy but he does not know whether Lowery has been reached.

He added that he talked with Birmingham attorneys representing The Times about 2 p.m. yesterday "and at the time, they had no knowledge of it."

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 151

ALABAMA JOURNAL FEB. 4, 1960

NEGROES ASK OUT OF $1 MILLION BOND

TIMES CASE DEFENDANTS TO ASK STAY: SHERIFF SEIZES ABERNATHY'S AUTO

Attorneys for four Alabama Negro ministers facing a half-million dollar libel judgment plan to ask the courts to forgo filing a $1 million bond to stay execution of the huge settlement.

The action was planned as a car belonging to one of the Negroes was seized here yesterday as partial payment

in the $500,000 libel judgment against him, three other Negroes' and the New York Times.

ABERNATHY CAR SEIZED

Deputy Sheriff F. H. Phelps said he impounded the 5-year old sedan owned by the Rev. Ralph D. Abernathy Friday under directions from Circuit Clerk John R. Mathews.

Abernathy and three other Negro ministers were co-defendants with the newspaper in a $500,000 libel suit filed [fol. 1665] by Police Commissioner L. B. Sullivan. A circuit court jury awarded Sullivan the full amount last September. A similar amount in a second trial was awarded this week to Mayor Earl James.

Charles S. Conley, representing Abernathy, told United Press International unless the court agrees to overlook the bond, his clients face "harrassment at most inconvenient times" during the period pending the appeal—which could go to the U. S. Supreme Court—is pedning.

"ALREADY STARTED"

Conley said the harassment began yesterday when Abernathy's 1956 Buick Century was impounded.

The suits stemmed from an advertisement in The New York Times of March 29, 1960, which solicited funds for the legal defense of Negro integration leader, the Rev. Martin Luther King, Jr.

A motion by the Negroes for a new trial in the Sullivan case was dismissed by Circuit Judge Walter B. Jones who said the ministers' attorneys failed to file their appeal within the required 30 days. Arguments of a Times motion for new trial will be heard March 3.

CAN STILL APPEAL

Conley, who entered the case last week, said denial of motion for a new trial has no effect on an appeal against the judgment "which we consider outrageous and most unjust."

Conley said other property belonging to the ministers could be impounded as partial payment of the judgment un-

less the court agrees to stay execution without the posting of the bond.

Mathews told the Associated Press writs executing the libel judgment have also been issued against the three other Negroes—the Rev. Solomon S. Seay, Sr., of Montgomery; the Rev. Fred L. Shuttlesworth, of Birmingham; and the Rev. J. E. Lowery of Mobile.

SILENT ON SEAY

Phelps who is handling the attachments against the property of Abernathy and Seay, said last night only Abernathy's auto had been impounded so far. He declined to say what will be done in Seay's case.

The deputy said the attachments against the belongings of Shuttlesworth and Lowery would be carried out by the [fol. 1666] sheriff's offices in Birmingham and Mobile.

Under such attachments, Phelps explained, anything of value owned by the defendants may be seized to satisfy the judgment. He refused to say if other property of Abernathy or Seay would be impounded.

SEAY HAS LITTLE PROPERTY

Seay told newsmen he has little property in his name that could be impounded. He said his house is in his wife's name and that he believes his auto is registered with one of his sons as owner.

No attachment was issued against The New York Times, the circuit clerk said, under Circuit Judge Walter B. Jones' ruling last month that Times attorney asked for retrial in the Sullivan case within the time limit.

Writs were signed against the four Negro ministers because the judge ruled that their attorneys waited too long to request another trial on Sullivan's libel suit.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 152

ALABAMA JOURNAL FEB. 6, 1961

ORDERS TO SEIZE PROPERTY ISSUED

Garnishment orders against the financial assets of four Negro ministers have been issued as a result of a $500,000 libel suit judgment awarded to Montgomery's police commissioner.

Court records disclosed today that garnishments have been directed to the Montgomery Improvement Association and the Tuskegee Federal Savings and Loan Association.

They were issued in an effort to attach any funds belonging to the Rev. S. S. Seay, Sr. and the Rev. Ralph D. Abernathy of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile.

[fol. 1667] The Negro ministers, and The New York Times, were defendants in a libel suit which brought a $500,000 judgment for Police Commissioner L. B. Sullivan last Nov. 3.

Sullivan's attorneys have taken steps to seize property belonging to the Negroes because Circuit Judge Walter B. Jones has ruled that they forfeited their chance for a new trial.

By contrast, no attempt has been made to put the judgment into effect against The Times since lawyers for the newspaper have a new trial motion pending.

The police commissioner's attorneys have already attached a five-year-old car owned by Abernathy as the first step toward satisfying the judgment.

Although only Abernathy and Seay are known to have direct connections with the Montgomery Improvement Assn., court records showed the garnishment covered all four ministers involved in the libel suit.

Calvin Whitesell, one of Sullivan's lawyers, said he did not know whether any of the four ministers have money in the Tuskegee savings association, but the garnishment would cover any funds in their names.

Abernathy is president of the MIA; Seay is the fulltime executive secretary.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 153

ALABAMA JOURNAL FEB. 11, 1961

RIGHT OF NOTIFICATION GIVEN LAWYER IN N. Y. TIMES CASE

An attorney for The New York Times has been given the right to be notified when a list is drawn for jury service on the pending $500,000 libel suit of City Commissioner Frank Parks.

Parks is the third city commissioner suing The Times over statements in an ad. The other two, Earl James and L. B. Sullivan, already have been awarded $500,000 verdicts by Circuit Court juries.

[fol. 1668] Roderick McLeod, member of the Birmingham firm of Beddow, Embry, and Beddow, was granted a motion directing the circuit clerk to notify him of the jury drawing.

DISMISSED MOTION

One of the grounds on which Times' attorneys sought a continuance during the suit by James was that they were not present when the jury venire was drawn. Judge Walter B. Jones dismissed the motion because nothing prevented their being present.

Jones also dismissed a motion by attorneys for four Negro co-defendants that the jury be quashed. The Negro attorneys charged that only "a token number" of members of their race served on local juries.

Arguments for a new trial of the Sullivan suit are to be heard by Judge Jones March 3. The Negro defendants, the Revs. Ralph Abernathy, Fred Shuttlesworth, S. S. Seay and J. E. Lowery, lost their chance for a new trial when their attorneys failed to continue their motion.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 154

ALABAMA JOURNAL FEB. 13, 1961

CLERIC'S CAR TO BE SOLD AT AUCTION

A car seized from one of the defendants has been advertised for sale in another move toward satisfying a $500,000 libel judgment against The New York Times and four ministers.

The 1956 model car seized from The Rev. Ralph D. Abernathy of Montgomery will be sold by the sheriff's office at a public auction Feb. 21 in Montgomery.

Police Commissioner L. B. Sullivan won the judgment last Nov. 3 against The Times and the Negro ministers—Abernathy, The Rev. S. S. Seay, Sr. of Montgomery, The Rev. F. L. Shuttlesworth of Birmingham and the Rev. [fol. 1669] J. E. Lowery of Mobile. Attached, in addition to Abernathy's car, were autos belonging to Shuttlesworth and Lowery, and Seay's share in a lot owned by himself and his wife.

NO MOVE

There has been no move to execute the judgment against The Times because the newspaper has pending a motion for a new trial. The Negroes and The Times were to argue new trial motions last month. The Times asked and got a continuance to March 3. The court ruled that the ministers lost their chance for a new trial when they failed to ask for a continuance.

Mayor Earl James won a $500,000 judgment in a similar suit last month. Both suits were based on an advertisement in The Times last March 29 which bore names of the Negroes as sponsors. They testified they neither knew of nor permitted use of their names.

Similar suits by City Commissioner Frank Parks and Gov. John Patterson remain to be tried.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 155

ALABAMA JOURNAL FEB. 23, 1961

4 NEGROES FILE SUIT

Four Negro ministers have asked a federal court to stop execution of two $500,000 libel judgments against them and halt the pending state court trials of two similar suits.

The ministers are defendants with The New York Times in four libel suits brought by Gov. John Patterson, Mayor Earl James and City Commissioners L. B. Sullivan and Frank Parks.

The ministers charge, in a civil suit filed Monday in U. S. District Court here, that Patterson and the city officials "conspired and planned—utilizing their official positions as well as the judicial machinery of the state, to deter and prohibit the plaintiffs and their supporters—from [fol. 1670] utilizing their constitutional rights—by instituting fraudulent actions in libel against the plaintiffs, without any basis in law or fact."

ACTION BEGUN

Execution of Sullivan's suit, tried last November in Circuit Court here, already has begun against the Negroes—the Rev. Ralph D. Abernathy and the Rev. S. S. Seay, Sr. of Montgomery, the Rev. F. L. Shuttlesworth of Birmingham and the Rev. J. E. Lowery of Mobile. There has been no attempt to execute the judgment against The Times because its motion for a new trial is pending.

The court ruled that the ministers lost their right to a new trial when they failed to join the newspaper last month in requesting a continuance of a hearing on the motion.

The James verdict was brought by another jury last month. There has been no attempt to execute it.

Suits by Patterson and Parks remained to be tried.

FOUR SHERIFFS NAMED

The ministers also named four sheriffs as defendants in an effort to keep them from attaching and selling their belongings. They are Sheriffs Holt A. McDowell of Jefferson County, Mac Sim Butler of Montgomery County, Ray D. Bridges of Mobile County and Wilmer Shields of Marengo County where real estate owned by Abernathy has been attached.

No hearing date has been set in the civil action before U. S. District Judge Frank M. Johnson, Jr.

Johnson earlier this week denied the Negroes' request for an order to stop seizure of their property. He said they had failed to exhaust their remedy in state court.

The libel suits were based on an advertisement appearing in The New York Times last March 29, which included names of the ministers as sponsors. They have insisted their names were used without their knowledge or consent.

The advertisement solicited funds for legal defense of the Rev. Martin Luther King, Jr., Negro integration leader then charged in state court with lying about his state income tax. King was acquitted. The ad was critical of [fol. 1671] handling of demonstrations by Negro college students in Montgomery.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 156

THE ALABAMA JOURNAL NOVEMBER 1, 1960

JURORS SELECTED FOR TIMES SUIT

By Judith Rushin Journal Staff Writer

Police Commissioner L. B. Sullivan's $500,000 libel suit against The New York Times got off to a slow start this morning, the majority of the time being taken for selection of a jury.

Times attorneys questioned all jurors at length concerning their feelings toward any position the New York news-

paper might have taken and any connection the jurors might have with Sullivan's lawyers or the City of Montgomery.

Two Negroes were among the original 37 jurors called for service this week, however they were immediately struck from the list by attorneys for Sullivan.

JURORS SEATED

Jurors who will hear the controversial case, which is expected to last all week are John B. Sanford, Boland R. Albright, John C. Boswell, Patrick T. Cahalin, Richard C. Croy, Guy Davidson, Carl Henry, Billy R. Miller, J. Auburn Moorer, Joseph W. McDade, Henry W. Rawls, and John R. Rigsby.

Sullivan's suit is one of three libel actions brought against The Times and four Alabama Negroes based on an advertisement which ran in The Times March 29.

The ad, placed in the newspaper by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, allegedly libeled Sullivan and city commissioners Earl James and Frank Parks in referring to police action taken in regard to Negro student demonstrations [fol. 1672] here.

2 OTHER CASES ON FILE

James and Parks have also each sued for $500,000.

Named as defendants, along with The New York Times, are Negro ministers Ralph D. Abernathy, Solomon S. Seay, Sr., Fred L. Shuttlesworth and J. E. Lowery, all of whom endorsed the advertisement.

According to one of Sullivan's attorneys, Roland Nachman, The Times retracted the incorrect portions of the ad referring to Montgomery to Gov. John Patterson, but never to Sullivan himself.

No retraction was ever made by the Negro defendants in the case, Nachman said.

Attorneys for The Times denied that the ad in question libeled Sullivan and said nowhere in the advertisement was there any reference to Sullivan or the police department.

JUDGE JONES PRESIDES

The Times had no reason to believe that material in the ad was false because it received the ad from a reputable advertising agency, said Atty. T. Eric Embry of Birmingham who represents the newspaper in the suit.

Sullivan's suit charges The Times with falsely and maliciously publishing the alleged libelous matter and asks for both general damages for injury to himself and punitive damages against the newspaper.

Opening statements as to what they expected to prove were given the jury by attorneys on both sides of the controversy before the court recessed for lunch. Testimony will begin this afternoon.

Circuit Judge Walter B. Jones is presiding over the case.

Attorney Fred Gray, representing the Negro defendants, told the jury that his clients did not sign the ad, were not members of the committee which published the ad, were never approached by that committee as to use of their names, and in fact did not know that the ad was to be run.

"What happened to them could happen to you or anyone else," Gray said.

[fol. 1673]
(ONE PHOTOGRAPH ATTACHED TO ORIGINAL)

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 157

ALABAMA JOURNAL NOVEMBER 2, 1960

L. B. SULLIVAN TESTIFIES IN TIMES SUIT

By Judith Rushin Journal Staff Writer

Police Commissioner L. B. Sullivan told a Circuit Court jury this morning that in his opinion statements in a New York Times advertisement referred to him and reflected upon his "ability and integrity."

Attorneys for Sullivan in his $500,000 libel action against The New York newspaper rested their case after hearing from one more witness.

DEFENSE TO OPEN

Defense attorneys for The Times and for four Alabama Negroes also being sued are expected to present their evidence this afternoon.

Asked by his attorney, Roland Nachman, Jr., whether or not he thought a statement in the ad concerning police [fol. 1674] "ringing" the Alabama State College campus with guns and tear gas after student demonstrations were true or false, Sullivan said, "The statement is completely false and I resent it very much."

NO PADLOCKING

As to whether or not the college lunch room had been "padlocked in an attempt to starve the students into submission,'" Sullivan said, "It has never happened in the City of Montgomery."

Did the police department have anything to do with bombing or assaulting any person by the police," the commissioner replied.

"Was King arrested seven times, as the ad states?"

"That is false."

"Did you have anything to do with procuring the indictment of King?"

"Nothing whatever."

"Did you testify before the grand or petit jury?"

"I testified at the trial." (King was tried and acquitted of perjury in filing his state income tax returns.)

"As to his guilt or innocence?"

"No, as to whether or not Dr. King could receive a fair trial in Montgomery."

"Do you consider that the statements in the advertisement refer to you and are associated with you?"

"I certainly do—the statements concerning arrest of people and truck loads of police. I feel they are associated with me."

THOUGHT A REFLECTION

Sullivan then told Nachman he thought the statements reflected upon his "ability and integrity" and that those statements "have been proved here as not true."

On cross examination, Times attorney T. Eric Embry of Birmingham attempted to prove that Sullivan had not in fact been damaged by the wording in the ad published March 29, in The Times, soliciting funds for the defense of King.

"Have you ever been ridiculed? Do you feel ill at ease walking about the streets of Montgomery?" Embry asked.

[fol. 1675] "I haven't had anyone come up to me personally and say they held me in ridicule because of the ad," Sullivan said.

"Has anyone threatened to have you removed from office?" Embry asked, to which the commissioner replied, "No."

"Have you been shunned by anyone in a public place or at the house of a friend or in any restaurant where you have been since the publication of the ad?"

"I don't recall," Sullivan answered.

Negro attorney V. Z. Crawford, of Mobile, who represents the four Negro defendants, then asked Sullivan if he filed suit to get publicity to run for another office.

Circuit Judge Walter B. Jones threw the question out as improper as Sullivan's attorneys jumped up to object.

After the plaintiff rested his case this morning, Negro atty. Fred Gray, of Montgomery, the lawyer who is representing the Negro defendants, filed a motion with the court to have his clients excluded on the grounds that Sullivan's attorneys failed to connect them with the case.

Judge Jones overruled the motion, recessed the trial for lunch, and said court would re-convene at 2:30 today.

DEFENDANTS

The Negro defendants, Ralph D. Abernathy, S. S. Seay, Sr., Fred Shuttlesworth and J. E. Lowery, were made parties to the suit because their names appear at the bottom of the full-page ad, allegedly as endorsers.

A Dothan trucking official was the first witness to take the stand this morning as the case went into its second day. Horace D. White, an officer in the P. C. White Truck Lines, said Sullivan had formerly worked for his company as safety director.

White testified that had he believed the information in the ad about police handling of student demonstrations here he would be reluctant to re-hire Sullivan.

OTHER INCIDENTS

Testimony also went into the record concerning other [fol. 1676] incidents mentioned in the ad. Circuit Clerk John Matthews read the names of student demonstrators who pleaded guilty to disorderly conduct and refusing to obey an officer and the fines they received, over Gray's objection that the cost of appeal was the reason for their pleading guilty.

Police detective Lt. E. Y. Lacy told the jury of the bombings at King's house, saying one of the bombs failed to go off. The other caused no injury.

Lacey said the police conducted an intensive investigation into the incident and even worked with other departments throughout the country.

The advertisement had stated that King's house was bombed and his wife and child were almost killed.

Police officer O. M. Strickland testified that he was one of the officers who arrested King for loitering around the city hall courtroom after he had been refused admittance because he did not produce a subpoena.

"Was King assaulted?" Nachman asked?

"No, he was not," Strickland replied emphatically.

Nachman then questioned Strickland as to his height and weight in relation to King's and solicited the information that the policeman was a smaller man.

THE ASSAULT QUESTION

The ad charged that King's "person had been assaulted."

Another witness for the plaintiff, Dr. Frank R. Stewart, State Superintendent of Education, told the Court that when nine students of Alabama State were expelled by the

State Board for disobeying the law during the demonstrations the Board heard no discussion about "singing on the capitol steps."

According to the advertisement in question, the expulsion came after students gathering at the capitol and sang, "My Country, 'Tis of Thee."

[fol. 1677]

YESTERDAY'S ACTION

Yesterday, attorneys for the Times began calling witnesses to lay the groundwork for their suit.

Five witnesses testified they felt an ad soliciting funds for the defense of the Rev. Martin Luther King, Jr. clearly reflected on Sullivan and his conduct of office, even though he was not specifically mentioned in the ad.

Attorneys representing The Times, however, managed to get most of these witnesses to concede that they never believed the statements which they felt referred to Sullivan and that they think no less of the police commissioner's integrity today as a result of the publication.

The first witnesses were Grover C. Hall, Jr., editor of The Montgomery Advertiser; Arnold Blackwell, a real estate and insurance broker; Harry Kaminsky, sales manager of a downtown clothing store; William M. Parker, a service station operator, and H. M. Price, Sr., who runs a food service equipment business.

SAY AD REFLECTED ON CITY

All made substantially the same testimony, that they felt the ad reflected on the city government and Sullivan in particular as police commissioner. Had they believed the statements to be true, Sullivan would have fallen in their estimation, they testified.

Sullivan's attorneys attempted to introduce evidence of racial tension that existed in Montgomery at the time the ad appeared. Advertiser Assistant Editor William H. McDonald was called to the stand to identify pictures of Negro demonstrations during March, but Judge Walter B. Jones ruled such evidence irrelevant and inadmissible.

There was one brief skirmish before testimony began.

When Calvin Whitesell, a city attorney representing Sullivan along with several others, began reading the controversial advertisement, Negro Atty. V. Z. Crawford of Mobile objected that Whitesell was pronouncing the word "nigger" instead of "Negro," as it appeared in the ad.

Judge Jones asked Whitesell if he was indulging in "interpolations" in his pronunciation. Whitesell replied he was pronouncing the word as he had done "all my life." [fol. 1678] To newsmen, he did not seem to be saying "nigger" but something closer to "nigra" or "nigro."

SAY AD NOT LIBELOUS

The Times, represented by the Birmingham law firm of Beddow, Embry and Beddow, does not contend the ad was entirely true. They do maintain, however, that it did not refer to any identifiable person nor is it libelous.

Further, they contend that it came from a reputable advertising agency and was signed by many persons of high character.

They cited several types of advertising which The Times will not accept. This was done to prove that the newspaper exercises diligent caution in screening out libelous, distasteful, and erroneous advertising.

Montgomery's other two commissioners, Mayor Earl James and Frank Parks, have also filed $500,000 suits against The Times.

(ONE PHOTOGRAPH ATTACHED TO ORIGINAL.)

[fol. 1679]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT'S EXHIBIT No. 158

ALABAMA JOURNAL NOVEMBER 4, 1960

MUST STICK TO THE TRUTH

The half million dollar judgment imposed on the New York Times et al by a Montgomery jury could have the effect of causing reckless publishers of the North—including magazine publishers—to make a re-survey of their habit of permitting anything detrimental to the South and its people to appear in their columns.

That the South, and the people of the South individually and collectively, are being libeled every day by Northern newspapers, magazines and their special correspondents is known of by all men.

Heretofore they have regarded themselves as safe from prosecution for their offenses because they were far off, and were under the impression that they could be sued for their derelictions only in the courts of their home cities.

The Alabama courts have declared that newspapers like the New York Times are "doing business" in Alabama, hence are responsible in Alabama courts for their actions affecting Alabama and Alabama citizens.

Half a million dollars is a mere fraction of what is required to repair the damage to the South, Alabama and their people inflicted by the New York Times and other newspapers.

Montgomery especially has suffered from their libels and has tried to take it in stride. But the effect of the constant news media misrepresentations of what goes on in Montgomery and in Alabama has been of great damage to this region.

So that this verdict—large by normal standards in damage suits—is a mere bagatelle when compared with the total injury to Montgomery caused by wild stories, untrue dispatches, and deliberately false advertisements appearing in the eastern newspapers and magazines.

To the newspaper profession it is something new to have to go into a faraway state and defend itself for things it prints.

That situation would not have arisen and would not have [fol. 1680] to be faced if the newspapers had confined themselves to the truth.

The advertisement in the New York Times which resulted in the big damage verdict in Montgomery is so palpably untrue and any competent newspaper man should have known better than to print such a deliberate libel.

Furthermore, the advertisement was signed by people who now claim to have known nothing about it. The Alabama Negro preachers whose names were signed to the libelous publication claimed in their trial that the first they knew of the matter was when they saw the advertisement with their names attached to it.

All this indicates reckless carelessness of the publication which characterizes so much of the material published in the North about Alabama, Montgomery and the race issue. News dispatches by the dozen in various newspapers and magazines, editorials by the score have been offenders just as this New York Times advertisement was an offender.

The Times was summoned more than a thousand miles to Montgomery to answer for its offense. Other newspapers and magazines face the same prospect.

The only way to prevent such long distance summons is to print the truth. When they print deliberately or through carelessness libels against individuals and communities, untrue stories about men and people they must expect to answer for them in the courts. And that does not mean in the courts of their home cities, but in the courts of the communities where the offense was committed.

Nothing that happened in the days of the New England fanatical abolitionists, Uncle Tom's Cabin and Simon Legree, the spleen of Thad Stevens, a race-mixing advocate who practiced what he preached, was worse than what is being said today by the extremists regarding Alabama, Montgomery and other communities of the South. They have been indicting a whole people in spite of Edmund Burke's assertion that you cannot indict a whole people.

If the Montgomery verdict has the effect of causing an inventory, a re-survey of policy, and study of the violations of law and decency they and their correspondents have [fol. 1681] been committing, the verdict will have served a good purpose not only to The New York Times but to all others who have been even more offensive offenders than has The Times.

DEFENDANT'S EXHIBIT No. 159

(One Roll of Film, offered to the proposed testimony of Lee Allan Ford, is uncopiable and in compliance with Title 7, Section 827 (1), will be attached to this Record as a part thereof and certified to by the Clerk of the Circuit Court.)

DEFENDANT'S EXHIBIT No. 160

Judge Walter B. Jones, presiding over the libel suit against The New York Times and four Negro leaders brought by Montgomery Commissioner of Public Affairs, L. B. Sullivan, charged the twelve man jury today to weigh the case on the basis of the evidence, and delivered to them written charges outlining the law that the jury must be shown to their reasonable satisfaction that the charges that The Times advertisement seeking funds for the legal defense of Martin Luther King, Jr. contained false and defamatory matter and implied improper conduct. And also to their reasonable satisfaction that the advertisement was directed at him individually.

Following the Judge's charges to the jury, the three sets of attorneys in the case also asked the Judge to approve another series of charges to the jury, which was done, and then the jury retired to their Chambers to deliberate the matter.

[fol. 1682] Their decision could be for Sullivan against The Times and the four Negroes, against The Times but not the Negroes, or against Sullivan. But in any case is sure to set an example for similar cases filed by Commissioner

Frank Parks, and Mayor Earl James, these cases still to be tried.

Earlier today, Attorneys for both sides made their summary arguments to the jury in the $500,000 libel brought against The New York Times and four Negro leaders whose names were used in the advertisement.

Attorneys for Public Affairs Commissioner L. B. Sullivan told the jury, newspapers have got to print the truth, let's hit them in the pocketbook. That is something they can understand. That is something that will stop them from printing lies.

Maintaining that the four Negro leaders did not sign the ad, and that their names were used without their consent, Negro attorney Fred Gray asked the jury, "How can you retract something, when you haven't Tracked it in the first place?"

[fol. 1682a] Reporter's and Clerks' Certificates to foregoing transcript (omitted in printing).